Calendar No. 796

100TH CONGRESS *2d Session*	SENATE	REPORT 100-424

REAUTHORIZATION OF THE OFFICE OF FEDERAL PROCUREMENT POLICY ACT OF 1988

REPORT

OF THE

COMMITTEE ON GOVERNMENTAL AFFAIRS UNITED STATES SENATE

TO ACCOMPANY

S. 2215

TO AMEND THE OFFICE OF FEDERAL PROCUREMENT POLICY ACT TO AUTHORIZE APPROPRIATIONS FOR AN ADDITIONAL 4 YEARS, AND FOR OTHER PURPOSES

JULY 8, 1988.—Ordered to be printed

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REAUTHORIZATION OF THE OFFICE OF FEDERAL PROCUREMENT POLICY ACT OF 1988

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Mr. GLENN, from the Committee on Governmental Affairs, submitted the following

REPORT

[To accompany S. 2215]

The Committee on Governmental Affairs, to which was referred the bill (S. 2215) to amend the Office of Federal Procurement Policy Act to authorize appropriations for an additional 4 years, and for other purposes, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

I. PURPOSE AND SUMMARY OF S. 2215

The purpose of S. 2215, the Reauthorization of the Office of Federal Procurement Policy Act of 1988 is to provide permanent authorization for appropriations to the Office of Federal Procurement Policy and to improve the management of federal procurement processes by amending and strengthening the Office of Federal Procurement Policy Act.

The legislation: (1) provides permanent authority for appropriations; (2) clarifies the role of the Administrator of OFPP to initiate policy and prescribe regulations, procedures, and forms relating to procurement; (3) establishes a Federal Acquisition Regulatory Council to help manage a Government-wide procurement regulation; (4) re-establishes a Cost Accounting Standards Board within OFPP to be chaired by the Administrator; (5) requires OFPP to conduct a study to develop a consistent methodology which executive agencies may use for measuring the profits earned by certain contractors; and (6) requires OFPP to conduct a study and report on the extent to which the Federal Procurement Data System is

adequate for the management, oversight and evaluation of federal procurement.

II. Background

During the late 1960's, public and Congressional concern over cost overruns on major military acquisitions and wasteful federal buying practices throughout government agencies led to the creation of the Commission on Government Procurement (COGP). The Commission was established in 1969 by Public Law 91-129 and was charged with studying and recommending to Congress ways to "promote the economy, efficiency, and effectiveness" of federal procurement.

The establishment of a central procurement policy office in the Executive branch was the first of 149 recommendations made by the Commission in its December 1972 report to Congress. This primary recommendation was based on the rationale that "effective management of the procurement process requires a high degree of direction and control of basic policy."

The Commission found that agency procurement policies and procedures were needlessly diverse, complex, and duplicative. There was no central office in the Executive branch prepared to provide the Congress or the President with recommendations for improving the procurement process, and there was no arbiter to reconcile agency disagreements on procurement policy. For these reasons, the Commission recommended that a central procurement policy office—independent of any agency having procurement responsibility, empowered with directive rather than merely advisory authority, responsive to Congress, and consisting of a small, highly competent cadre of procurement experts—was urgently needed.

In response to this recommendation, the Office of Federal Procurement Policy Act of 1974 (Public Law 93-400) was enacted, creating the Office of Federal Procurement Policy (OFPP) within the Office of Management and Budget (OMB) and authorizing appropriations for OFPP through fiscal year 1979. Congress intended to establish a strong central manager with clout for procurement policy close to the executive budget process, close to the President, and responsive to the Congress. The OFPP was charged under Public Law 93-400 with providing overall leadership and direction for procurement policy. The Administrator of OFPP was assigned statutory authority to direct procurement policy and prescribe procurement regulations, procedures, and forms to implement government-wide procurement policy.

In 1979, the OFPP was reauthorized for an additional four years with enactment of the Office of Federal Procurement Policy Act Amendments (Public Law 96-83). The 1979 amendments maintained the Administrator's authority to direct procurement policy and modified the authority to "prescribe regulations, procedures, and forms" by establishing in place of the prescriptive authority an authority for the Director of the Office of Management and Budget to rescind regulations and rules determined by the Administrator to be inconsistent with policies established pursuant to the OFPP Act.

The 1979 amendments also directed OFPP to develop and submit to Congress a proposal for a Uniform Federal Procurement System (UFPS). Two major improvements for procurement practices identified by the Commission on Government Procurement were the need for a single, generic procurement statute and a single procurement regulation. The Congressional intent underpinning the 1979 amendments was to focus the resources of the OFPP to bring about an executive branch consensus on how to achieve these objectives.

A comprehensive UFPS proposal was drafted and submitted to Congress in 1982. Many of the major recommendations contained in the proposal were later enacted into law in the Competition in Contracting Act of 1984 (Public Law 93–369).

In 1983, OFPP was reauthorized through fiscal year 1987 (Public Law 98–191). The 1983 law restored the Administrator of OFPP's regulatory authority to prescribe regulations, procedures and forms to implement procurement policy when the Department of Defense, the National Aeronautics and Space Administration, and the General Services Administration, are unable to agree on, or fail to issue, Government-wide regulations, procedures and forms in a timely manner. It retained the authority of the Director of OMB to rescind or deny promulgations of procurement regulations that were determined by the Administrator to be inconsistent with the OFPP Act.

In addition to this regulatory authority, the 1983 reauthorization charged the Administrator to:

(1) provide leadership, resolve differences, and ensure action by executive agencies in the establishment, development and maintenance of the single system of simplified Government-wide procurement regulations;

(2) coordinate Government-wide procurement system standards to be implemented by the executive agencies;

(3) provide leadership and coordination in the formulation of executive branch positions on legislation relating to procurement;

(4) provide for a computer-based Federal Procurement Data System located in the General Services Administration (acting as executive agent for the Administration) to collect, develop, and disseminate procurement data;

(5) provide for a Federal Acquisition Institute located in the General Services Administration (acting as executive agent for the Administrator) to foster a professional procurement workforce and promote research to improve the procurement process;

(6) establish criteria and procedures to ensure the solicitation of the viewpoints of interested parties in the development of procurement policies, regulations, procedures, and forms;

(7) develope standard contract forms and language to reduce the Government's and the private sector's cost of doing business with the government; and

(8) complete action, as appropriate, on the recommendations of the Commission on Government Procurement.

III. Need for Legislation

The 1983 authorization for appropriations to OFPP expired on September 30, 1987. While appropriations for OFPP were continued for fiscal 1988, there is a need to reauthorize appropriations for the office.

The 1988 reauthorization process is the fourth time that Congress has addressed the need for a central office for government-wide procurement policy. On each occasion the Committee on Governmental Affairs has confirmed the need for a strong Office of Federal Procurement Policy.

When the Commission on Government Procurement reported in 1972, federal procurement was a 57.5 billion dollar a year policy issue. In fiscal 1988, it will amount to approximately a 200 billion dollar policy issue. While there have been achievements since 1975 to standardize the statutory framework for procurement practices and to simplify the regulatory system, the need to make further progress on these two objectives remains a priority and continues to merit high level, sustained attention. So does the need to continue to advocate competitive practices throughout the procurement process.

The need for an executive branch coordinator of legislative views and a source for procurement policy information and advice responsive to Congress also continues. During each of the past five Congresses for example, at least 200 bills concerning procurement have been introduced.

The battle against waste in government procurement led the Procurement Commission to conclude in 1972 that a central manager within the executive branch and institutionally capable of strong leadership needed to be created by the Congress. A quick review of the Packard Commission's recommendations in 1986 reveals strikingly similar conclusions to that drawn by the Procurement Commission. The Committee on Government Affair's recent review of the need for the Office of Federal Procurement Policy found that the need for a strong OFPP is even greater today than it was in the early 1970's.

IV. Performance of the Office of Federal Procurement Policy

In September 1987, the General Accounting Office (GAO) completed an assessment of OFPP's effectiveness. Its report, "Assessment of the Office of Federal Procurement Policy", GAO/NSIAD-88-35, was issued in November 1987. GAO concluded that OFPP's performance has been uneven. GAO found that:

> From its inception in 1974 through December 1986, OFPP's performance as the Federal Government's procurement policy leader has been uneven. Although OFPP did have some noteworthy achievements during the most recent reauthorization period—implementing the FAR and working on legislation for increasing competition—many of the procurement executives, industry officials and other procurement experts [interviewed by GAO] rated OFPP's overall performance during this period as being no more than marginally effective . . .

Factors identified by GAO as contributing to OFPP's uneven performance were:

> A lack of strong management leadership in OFPP, inadequate support from OMB, and a lack of staff resources . . .

For example, the GAO noted that since its inception, the Administrator's position had been left vacant 22.5 percent of the time. In testimony before the Committee, Comptroller General Bowsher and Senator Chiles mutually agreed that the personal support from and the working relationship between the Director of OMB and the Administrator was the single most critical factor in the performance of the Office. Long periods of vacancy indicate a lack of commitment and support for the Office and its functions.

The Committee is pleased to note, as did the GAO, that many of the factors contributing to OFPP's uneven performance have to a large extent been corrected. The Director of OMB and the President have supported increases in OFPP's 1988 budget and new staff is being added to the Office. OFPP's funding and staffing levels for fiscal year 1984 through 1988 are shown below.

	Budget level (millions)	Authorized staffing
Fiscal year:		
1984	$2.556	41
1985	1.615	25
1986	1.541	25
1987	1.620	25
1988	2.300	32

Among the accomplishments of OFPP since the 1983 reauthorization are:

1. The implementation of the Federal Acquisition Regulation (FAR) on April 1, 1984, resulting in an approximately 50 percent reduction in the number of pages of agency and departmental primary procurement regulations (from about 64,000 pages to 32,000).

2. The issuance of Government-wide criteria for enhancing competition and evaluating agency procurement systems. To date, 35 agencies have certified that their procurement systems comply with appropriate designated criteria. The success of the criteria is reflected, in part, by the fact that the percentage of competitively awarded contract dollars has increased from 44 percent in 1984 to over 54 percent in 1987.

3. The improvement of the Federal Procurement Data System (FPDS). In August 1985, OFPP initiated the first comprehensive review of the data system since its establishment in 1979 to improve its overall structure, content, and responsiveness to the needs of Congress, Executive agencies and the private sector. A new data system is expected to be operational at the beginning of fiscal year 1989.

4. The issuance of a policy and criteria to ensure the timely solicitation of public comments during the development of procurement policies, procedures, and forms. This policy required that significant proposed changes to procurment regulations be published in

the Federal Register for not less than 30 days to afford interested parties an opportunity to comment on them. This policy of enhanced public participation was subsequently enacted into law by Public Law 98–577, "The Small Business and Federal Procurement Competition Enhancement Act of 1984".

5. The completion of six major studies mandated by Congress. These studies pertained to such diverse issues as (1) end-of-year spending practices of the Department of Defense, (2) the extent of competition in the award of subcontracts by prime contractors, (3) spare parts procurement practices of the Department of Defense, (4) procurement of professional services by federal agencies, (5) the feasibility of qualifying dual competitive sources for subsystems, assemblies and components of major systems, and (6) policies governing payments made to contractors for the relocation of contractors' employees.

6. The testing of bankcards in lieu of purchase requisitions and use of petty cash for small purchases up to 2,500 dollars. This test was begun in 1985 by OFPP and was initially confined to the Department of Commerce. The test has now proven to be effective in reducing paperwork, lowering cash holding, and providing better accounting records than prior methods. Accordingly, it has been expanded to other agencies and will be available for use throughout the Executive branch in fiscal year 1989.

7. The initiation of a major new procurement regulatory review program. In 1987, OFPP established internal procedures for reviewing all proposed procurement regulations and paperwork cases. Paperwork cases are submissions to OMB by the Federal agencies for clearance under the Paperwork Reduction Act, Public Law 96–511. Agencies are required by that law to justify their information collection needs, estimate the burden of paperwork requests, and solicit public comments. In the past year, staff at OFPP has worked together with staff at the Office of Information and Regulatory Affairs within OMB to review regulations. OFPP has reviewed some 139 regulations and commented or recommended rescissions on 48 of them. (35 percent). It has also examined some 68 procurement related paperwork cases and recommended changes on 32 (47 percent).

8. The initiation in March 1988 of a thorough review of the regulations issued by agencies and departments to supplement the FAR. The purpose of this review is to eliminate those regulations that are not essential and merely duplicate or paraphrase the FAR. It is estimated that upwards of 40 percent of such regulations can be eliminated. This review is scheduled to be completed by October 1, 1988.

9. The improvement of the Government's basic program to rely on commercial sources for the performance of commercial services. The Government's policy for reliance on commercial activities set forth in OMB Circular A–76 has been improved by OFPP over the last 4 years. The A–76 program has been incorporated into the budget review process and Executive Order 12615 was issued in November of 1987.

10. Providing leadership in the development of Administration positions on procurement legislation. Since its last reauthorization, OFPP has testified before Congressional Committees on 19 differ-

ent occasions and has reviewed or commented on more than one hundred other legislative initiatives and proposals.

11. The issuance of the following Policy Letters and Circulars:

(a) OFPP Policy Letter 84–1, April 4, 1984, concerning Federally-Funded Research and Development Centers. This policy letter provides Government-wide policies for the termination of the sponsorship of Federally-Funded Research and Development Centers (FFRDCs).

(b) OFPP Policy letter 85–1, August 19, 1985, Federal Acquisition Regulations Systems. This policy letter implemented requirements of the OFPP Act concerning the definition and maintenance of the single system to simplify Government-wide procurement regulations.

(c) OMB Circular No. A–114, Management of Federal Audiovisual Activities, March 20, 1985. This revised circular updated Government-wide audiovisual management and procurement policies.

(d) OMB Circular No. A–131, Value Engineering Programs, February 3, 1988. OFPP developed a new OMB circular on value engineering that requires agencies and departments to establish and use value engineering programs, where appropriate, to reduce non-essential costs and improve productivity.

V. Legislative History

Senator Chiles, with Senators Nunn, Levin, and Bingaman cosponsoring, introduced S. 2215, the "Reauthorization of the Office of Federal Procurement Policy Act of 1988", on March 24, 1988. The bill was referred to the Committee on Governmental Affairs for consideration by its Subcommittee on Federal Spending, Budget, and Accounting.

The Subcommittee held a hearing on S. 2215 on March 25, 1988. On April 14, 1988 the full Committee on Governmental Affairs met to mark up the legislation and voted favorably to report the bill, as amended to the full Senate.

Senators Roth and Cohen joined cosponsors.

HOUSE ACTION

On March 28, 1987 Congressman Brooks, with Congressman Horton cosponsoring, introduced H.R. 2539, the "Office of federal Procurement Policy Act Amendments of 1987". The bill was referred to the Committee on Government Operations. On June 18, 1987 the Committee's Subcommittee on Legislation and National Security held hearings on the legislation.

On September 25, 1987 Congressman Brooks introduced H.R. 3345, which amounted to an amended version of the "Office of Federal Procurement Policy Act Amendments of 1987". The bill was referred to the Committee on Government Operations. On September 29, the Committee's Subcommittee on Legislation and National Security met to consider the legislation and forwarded the bill to the full Committee. On September 29 the full Committee marked-up the legislation and by voice vote, voted to order the bill reported as amended.

Congressmen Horton, Weiss, and Bustamante joined as cosponsors of H.R. 3345.

VI. HEARINGS

The Subcommittee on Federal Spending, Budget, and Accounting held a hearing of S 2215 on March 25, 1988. Testimony was received from Charles A. Bowsher, Comptroller General of the United States; Robert B. Costello, Under Secretary of Defense for Acquisition; Robert Bedell, Administrator of OFPP; Hugh Witt, Lester A. Fettig, Karen H. Williams, and Donald E. Sowle, former Administrators of OFPP; Jean A. Caffiaux, Electronic Industries Association; Clarence Kipps, U.S. Chamber of Commerce; Robert Trimble, Aerospace Industries Association; Colette Nelson, American Subcontractors Association; and C. Stanley Dees, Public Contract Law Section of the American Bar Association.

The witnesses were asked to address the following issues:

The role and duties of a Federal Acquisition Regulatory Council.

The scope of authority vested in the OFPP Administrator to initiate procurement regulations and policies.

An assessment of OFPP's effectiveness in the immediate past, suggestions for improvement, and whether the Office should be reauthorized.

The utility of re-establishing the Cost Accounting Standards Board in OFPP.

The utility of a profit methodology study.

All the witnesses supported reauthorizing the Office of Federal Procurement Policy and agreed that although OFPP's performance since 1974 had been uneven, recent events demonstrate the OFPP is now taking a leadership role in tackling procurement issues.

The Comptroller General strongly endorsed the establishment of a Regulatory Council, the clarification of the Administrator's regulatory authority, the Cost Accounting and Standards Board (CAS Board) proposal contained in the bill, and the mandate for OFPP leadership in a profit methodology study.

Both the Comptroller General and Senator Chiles agreed and stressed that an effective OFPP must have strong support from the Director of OMB if OFPP is to accomplish its purpose. Long periods without a presidentially appointed Administrator have worked to cripple the Office's effectiveness. Directors of OMB need to have awareness of the management needs attendant to the federal government's 200 billion dollar a year procurement program.

Secretary Costello of the Department of Defense expressed support for reauthorization of OFPP. He stressed the importance of a focal point for the acquisition community in dealing with interagency and legislative policy matters. He stated some broad reservations about the Administrator of OFPP's regulatory authority and the concept of a cost accounting standards board. While he did not address the provisions of S. 2215 in his testimony he agreed to provide the Committee with his specific suggestions after the hearings.

Administrator Bedell described OFPP's recent efforts to carry out its responsibilities, expressed the Administration's support for reauthorization, and supported the provisions of a S. 2215.

The former Administrators of OFPP testified as a panel and highlighted the importance of a supportive relationship between the Administrator of OFPP and the Director of OMB. They empha-

sized that while progress had been made in reducing the unnecessary complexity of the procurement regulatory system, much remained to be done. As a group they endorsed the establishment of a Federal Acquisition Regulatory Council to better manage the FAR. The view was that the Council would provide a link between various procurement executives, and bring high-level management attention to procurement issues. It would assist in resolving agency differences and in streamlining the maintenance of the regulatory system.

The Administrators endorsed the need to clearly establish the OFPP's regulatory authority. Administrator Witt recommended the Committee consider permanent authorization for appropriations to OFPP. Another recommendation presented was that the Committee consider raising the level of the Administrator from an Executive level IV to a III.

Industry witnesses testified as a panel and uniformly endorsed a strong and vigorous OFPP. As a group they pinpointed the need for OFPP to operate as a focal point to ensure public and contractor opportunities to participate in the development of procurement policy.

The CAS Board provisions of S. 2215 drew several specific comments. Most witnesses believed that the Board should be reestablished and located within OFPP. Many of the industry witnesses took the position that the Board should also be given the authority to address allowability of cost issues as well as allocability of costs. Recommendations were also made regarding what types of contracts should be covered by the Board, and the proper composition and term of the Board.

VII. Committee Discussion of Provisions of S. 2215

PERMANENT REAUTHORIZATION FOR APPROPRIATIONS

Section 2 permanently reauthorizes the Office of Federal Procurement Policy. The 1988 reauthorization is the fourth time the Committee has used the need to reauthorize appropriations for OFPP as an opportunity to address the need for a strong manager of government-wide procurement policy. On each occasion the Committee has affirmed the need for a strong Office of Federal Procurement Policy. The Committee believes its cumulative review of the need for an OFPP makes an affirmative case for a permanent authorization for appropriations to OFPP.

Three other factors in the Committee's determination should be noted. The OFPP's parent organization, the Office of Management and Budget does not have a periodic authorization associated with it. This fact does not preclude the Committee from evaluating the need for and performance of OMB at any time it chooses to do so. The Committee has engaged in such evaluations during the confirmation process for Directors and Deputy Directors of OMB and on other occasions. The same will be true for OFPP. The Committee does not believe it will make OFPP and its activities less accountable to it by providing permanent authorization for appropriations.

Secondly, periodic authorization for appropriations is merely one mechanism for periodic review the Congress has available to itself. The annual appropriations process and in recent years the budget

process have precipitated periodic reviews of the need for executive branch functions. In addition, the Committee has examined the need for OFPP and other organizations, as a result of reorganization proposals sent to it by the President.

Thirdly, the authorization for OFPP is within the jurisdiction of the Committee on Governmental Affairs. The Committee chose to establish periodic authorizations of OFPP as a "sunset" mechanism to encourage revisiting the need for and the policy directions undertaken by the Office. The Committee's experience in OFPP's case reveals that the need for periodic reauthorization has put the Committee at a disadvantage relative to other authorizing Committees when discussing the substantive merits of the relationship of OFPP to the procurement functions of other agencies whose authorization does not come from the Governmental Affairs Committee.

For example, the Department of Defense, given its relative role in the Government's procurement activities, has historically expressed concern that the assignment of powers to OFPP could diminish the authority and responsibility of the Defense Department for military procurement policy. On each occasion of OFPP's reauthorization, the Committee on Governmental Affairs has spent much time and effort with the Committee on Armed Services providing assurances on jurisdictional interests. The Committee notes that over time, had it not been for the joint membership of Senators on both Committees, these concerns might not have been overcome. If there had been a stalemate, review of OFPP's performance would have been left to the appropriations process.

By providing permanent authorization for appropriations to OFPP the Committee does not intend to change the requirement for a separate appropriation to the Office, separately accounted for, as has been the practice of appropriations of OFPP since its establishment.

CLARIFICATION OF THE AUTHORITY OF THE OFPP ADMINISTRATOR

Section 3 clarifies the authority of the Administrator of OFPP to initiate procurement policy and prescribe any regulations, procedures, and forms necessary to implement procurement policy when the Department of Defense, the National Aeronautics and Space Administration, and the General Services Administration are unable to agree or fail to take timely action.

The Office of Federal Procurement Policy Act of 1974, Public Law 93-400, originally established the authority of the Administrator of OFPP as follows:

> *Sec.* 6(a) The Administrator shall provide overall direction of procurement policy. To the extent he considers appropriate and with due regard to the program activities of the executive agencies, he shall prescribe policies, regulations, procedures, and forms which shall be in accordance with applicable laws and shall be followed by executive agencies.

The 1979 reauthorization act, Public Law 96-83, modified the basic authority granted the Administrator by eliminating the Administrator's authority to prescribe "regulations, procedures, and forms", and adding an authority for the Director of OMB to rescind

any agency regulations and rules determined by the Administrator to be inconsistent with procurement policy established by the Office of Federal Procurement Policy Act.

In 1983, the Committee on Governmental Affairs concluded there was a need to restore the initial language granting the Administrator prescriptive authority over "regulations, procedures, and forms". The Committee concluded (Report No. 98-214) that an effect of the 1979 change was to weaken the ability of the Administrator of OFPP to direct overall procurement policy, resolve agency differences, and establish and help maintain a single system of procurement regulations. The Committee acted upon a General Accounting Office conclusion that without strong OFPP leadership for resolving conflicts among, and insuring action by the Executive agencies, the FAR system could crumble under the proliferation of supplemental agency procurement regulations.

The Administrator of OFPP's regulatory authority has historically been a focal point for the Department of Defense's concerns over the prospect of an active OFPP. In 1983, Senators Cohen and Levin, cosponsors of S. 1001, the OFPP reauthorization bill, and members of both the Committees on Governmental Affairs and Armed Services, conducted extensive discussions with the Chairman and other members of the Armed Services Committee to come to an agreement on how to restore the Administrator of OFPP's regulatory authority.

An issue raised by the Chairman of the Armed Services Committee was whether the restoration of explicit regulatory authority to the Administrator would enable an Administrator to act unilaterally, without consulting the Secretary of Defense, to prescribe regulations to implement procurement policy which then would have to be followed by the Department of Defense.

In response to the Chairman's concerns, Senator Cohen, as floor manager to S. 1001, agreed to clarify the Government Affairs Committee's intention as to when regulatory authority should be used. (Congressional Record, November 15, 1983, S16137). Regulatory authority should be used "in any instance in which the Administrator determines that the DOD, NASA, and GSA are unable to agree on or fail to issue Government-wide regulations, procedures, and forms in a timely manner."

This language is now contained in Section 6(b) of the OFPP Act. The Congressional intent was to make clear that while the Administrator possessed the authority to prescribe regulations, the authority is not to be exercised unilaterally and without consultation with responsible officials at DOD, NASA, and GSA, the three agencies statutorily authorized to issue procurement regulations. The authority is to be used there is a failure to agree among the agencies or there is an unwillingness to act on their part to implement government-wide procurement policy. The Administrator is to determine what constitutes a "timely manner".

Since 1983, questions have been raised by some agency counsels as to whether the clarifying language of Section 6(b) of the OFPP Act established a general Congressional expectation that the Administrator of OFPP should wait and rely on DoD, NASA, and GSA to undertake regulatory changes in the FAR system, or even broader procurement policy initiatives, before asserting his or her

authority and responsibility to exercise leadership for government-wide procurement reforms. It is the view of the Committee on Governmental Affairs that this issue goes to the very heart of the role expected of the Administrator of OFPP. For example, is the Administrator to be an active leader in the battle to reduce the regulatory complexity of the procurement system or a passive coordinator of whatever proposed changes the bureaucracy is able to generate?

Senator Chiles, the sponsor of S. 2215, was the Senate sponsor of the initial OFPP Act, and a strong supporter of OFPP's reauthorization in 1979 and 1983. In approaching the reauthorization of OFPP in this Congress, the Senator sought to resolve questions on the authority of the Administrator, and on what style of leadership is expected. Given the cross membership of several members of Governmental Affairs with Armed Services, the Senator also sought clarifying language which could be agreed upon by both Committees.

In addition, since 1983 the position of Under Secretary of Defense for Acquisition was created by the "Defense Acquisition Improvement Act of 1986". Congress intended that the Under Secretary be a strong agent for improving acquisition policy within the Department of Defense. The Committee on Governmental Affairs wanted to assure itself that the Administrator's overall procurement authority and responsibilities would work effectively with the new responsibilities assigned the new Under Secretary.

Senator Chiles developed language to amend Section 6(b) of the OFPP Act together with Senator Nunn, the Chairman of the Armed Services Committee; Senator Levin, the Chairman of the Governmental Affair's Subcommittee on Oversight of Government Management; and Senator Bingaman, the Chairman of Armed Service's Subcommittee on Defense Industry and Technology. The language developed constitutes Section 3 of S. 2215. Senators Nunn, Levin, and Bingaman join Senator Chiles as original cosponsors of S. 2215.

The language of Section 3 is intended to clarify the regulatory authority of the Administrator by making clear the Administrator has the authority to "initiate" as well as "direct" procurement policy. While the Committee does not envision an Administrator asserting the authority of Sections 6(a) or 6(b) without consulting the respective agencies, the Committee does intend the Administrator to have the authority to compel action on the part of the agencies, if necessary. The Committee intends the Administrator of OFPP to be an active leader of government-wide procurement reform and effective manager of the FAR system. The Administrator can prescribe implementation of procurement policy he has initiated, or that has been initiated by the President or Congress, if he determines DoD, NASA, and GSA have failed to do so in a "timely manner".

The Committee also wants to emphasize that the clarification of the Administrator's authority is not intended to relieve the procuring agencies of their responsibility to develop and implement policies and rules to improve the procurement process. The magnitude of governmental contracting activities is such that responsibility for procurement policy must be exercised primarily by the agen-

cies. While OFPP can provide an effective stimulus to agency actions, the Committee looks to the individual agencies to initiate and execute meaningful procurement reform.

ESTABLISHMENT OF A FEDERAL ACQUISITION REGULATORY COUNCIL

Section 4 of S. 2215 establishes a Federal Acquisition Regulatory Council. The Council shall be composed of four members, the Administrator and the official assigned by statute with the responsibility for acquisition policy in the GSA, DOD, and NASA.

The purpose of the Council is to provide a structural link between key procurement executives and thereby bring sustained, high-level attention to the procurement issues associated with maintaining a simplified regulatory system. The Committee intends the Council to function as a coordinating mechanism, as a management tool, for more effective maintenance of the FAR.

The activities of the Council should also serve as a means for the Administrator to meet his or responsibilities to consult with the procurement agencies and help resolve agency differences in the promulgation of regulatory changes. The language of Section 4 does not grant the Administration of OFPP any additional authority beyond that granted by subsections 6(a) and 6(b) of the OFPP Policy Act. Neither does it in any way limit the authorities of the respective Council members.

The concept of a single Federal Acquisition Regulation was originally advanced by the Commission on Government Procurement in 1972. In response to the Commission's findings, the effort to develop the FAR began in 1978. The objective was to consolidate the primary procurement regulations into a single document, reduce paperwork and complexity, and eliminate redundancy and conflicts.

The complexity and paperwork associated with the procurement system was wasteful. It was a significant factor in inhibiting small, and minority business participation in the federal marketplace; in discouraging technology innovation in procurement; and in creating barriers to competitive practices by putting the government in the position of relying on a limited number of suppliers.

Under the auspices of OFPP, agencies of the Executive branch worked for five years to develop the FAR system. There were problems in completing the FAR. Failure to meet established deadlines was a major reason the Committee determined there was a need to restore regulatory authority to the Administrator of OFPP in 1983.

In April of 1984 the FAR was implemented—four years past its original target date. Among other accomplishments the FAR brought about a 32,000 page reduction in the number of pages needed for procurement regulations.

In the four years since the FAR's implementation, however, the Committee has become concerned about the emergency of serious problems with the maintenance and management of the FAR system. Problems with the system were documented in a November 1986 OMB study prepared by Thomas Delaney for the Director of OMB. Among the problems identified were the following:

> The process for amending and maintaining the FAR is overly cumbersome and time consuming. On average, it takes 16 months to process a change in the rules;

Redundancies and inconsistencies continue to exist between the FAR and agency supplementing regulations implementing the FAR. Much of the value of a single FAR was being undercut as individual agency supplements began to proliferate; and

A lack of effective management of the overall regulatory system. Specifically, no institutionalized management structure exists to coordinate, provide direction, establish priorities, and monitor performance of the two councils created to maintain the FAR. (The Defense Acquisition Regulatory Council, DARC; and the Civilian Agency Acquisition Council, CAAC.)

Actions have been undertaken to address some of the problems identified in the FAR system study. With the arrival of a new Administrator in September of 1986, agencies were requested to review their supplementing regulations and eliminate duplication. OFPP itself, is reviewing all new and proposed rules for simplification purposes. Sequential processing of proposed changes to the FAR by the two councils was replaced by a joint processing technique designed to reduce the time required for amendments to the FAR.

Nevertheless, the fundamental lack of overall management of the FAR system continues to be a problem. Regulations continue to proliferate; examples where public and industry comments are not sought or heeded are too frequent; and agency responsibilities to minimize paperwork requests often are given only lip service. These conditions are symptomatic of a program that is performing contrary to the purposes for which Congress mandated the FAR system. The Committee believes the establishment of a high level management council would focus needed high level attention on procurement regulatory policy.

The Committee does not intend that the Federal Acquisition Regulatory Council be viewed necessarily as a substitute for the present two councils, DARC and CAAC, involved with procurement regulations. Neither of these councils are established by statute. An issue the Council should consider is whether the current system for issuing and maintaining the FAR is efficient and effective.

The Committee does intend the Council to be a structural mechanism to assist the agencies with operating procurement programs to better intergrate their agency procurement practices with government-wide procurement policy. Under the provisions of S. 2215, members of the Council will be responsible for: (1) approving or disapproving their own agency's procurement regulations: (2) carrying out procurement-related paperwork reduction responsibilities for their agencies: and (3) reducing levels of regulatory review in their agency's procurement systems. The Committee believes that the Council established by S. 2215 will ensure that accountability for these procurement matters is clear and that higher policy level attention is brought to bear on a regulatory system which needs streamlining and simplification.

While the Committee recognizes the senior acquisition officials who serve as members of the Council may need to designate a responsible official to attend Council meetings, the Committee believes measurable improvement in the regulatory process will occur only with the active involvement and support of the senior policy makers. A specific example of an appropriate designation would be

the Under Secretary of Defense for Acquisition designating the Assistant Secretary of Defense for Production and Logistics to attend Council meetings which the Under Secretary cannot attend.

The Committee wants to highlight an aspect of the provisions of Section 4 requiring members of the Council to carry out responsibilities of the Paperwork Reduction Act for information collection requests relating to procurement regulations. The Governmental Affairs Committee is the Committee of jurisdiction for both the Office of Federal Procurement Policy Act and the Paperwork Reduction Act. Both Acts strongly encourage public participation and comments in the development of procurement regulations through separate requirements for Federal Register notices. (Section 22 of the OFPP Act; Sections 3504(h) and 3507 of the Paperwork Reduction Act.) Comments provided to the Committee by the Business Council on the Reduction of Paperwork suggest that the dual statutory requirements for Federal Register notices could be constructively consolidated by the agencies.

The Committee expects the Council will consider this suggestion to bridge the public notice and comment requirements of the two Acts and to coordinate a government-wide response to this opportunity to strengthen public participation in the regulatory process. In addition, continuing efforts by the Office of Federal Procurement Policy and the Office of Information and Regulatory Affairs within OMB to build bridges between the Offices in their oversight responsibilities of the agencies is to be encouraged.

RE-ESTABLISHMENT OF A COST ACCOUNTING STANDARDS BOARD

Section 4 of S. 2215 also re-establishes as Cost Accounting Standards Board. In 1968, at Congressional request, the Comptroller General undertook a study to determine the feasibility of applying uniform cost accounting standards to be used in all negotiated defense contracts and subcontracts of $100,000 or more. At the conclusion of this 18 month study, the Comptroller General issued a report which stated that uniform cost accounting standards were both feasible and desirable.

In 1970, Congress created a CAS Board to develop and promulgate cost accounting standards for use by the federal agencies and government contractors and subcontractors. The Board was chaired by the Comptroller General. The purpose of the standards was to achieve more uniformity and consistency in the measurement, assignment, and allocation of costs to contracts with the federal government. From 1970 to 1980, the Board issued 19 basic Cost Accounting Standards. In 1980, Congress did not provide an appropriation for the CAS Board, and it ceased functioning. The Board's rules, regulations and standards, however, remain in effect to this day.

In the eight years since the former Board went out of existence, several of the standards which were issued by the Board have become outdated. Examples include the standards related to pension costs, insurance costs, and the accrual of vacation time by employees on government contracts.

Agency efforts to accommodate the existing standards to present day circumstances have been fragmented. Businesses supplying the

Government have been left confused as a result of a lack of day-to-day and agency-by-agency consistency in applying cost accounting standards. In order to update and maintain a current and more uniform system of cost accounting standards, the Committee believes a cost accounting standards board should be re-established.

The CAS Board created by Section 4 will consist of five members, with the Administrator of OFPP serving as Chairman. The other four members will include a representative of the Secretary of Defense, a representative of the Administrator of General Services, a representative from private industry, and a representative of the accounting profession. The private sector and accounting profession representatives shall be appointed by the OFPP Administrator. The term of each member of the Board, other than the Administrator, shall be 4 years.

The Committee believes the Board should be a part of OFPP. The Administrator, after consultation with the Board, shall have the authority to make, promulgate, amend and rescind cost accounting standards and interpretations designed to achieve uniformity and consistency in the measurement, assignment, and allocation of costs to contracts with the government. It is the Committee's intent and expectation the Board will employ "majority vote" procedures in making recommendations to the Administrator. The Director of OMB, on the advice of the Administrator, will continue to have the authority provided in Section 6 of the OFPP Act to deny the promulgation of or rescind regulations inconsistent with procurement policy.

The cost accounting standards promulgated by the Board shall be used by all executive agencies, contractors, and subcontractors in estimating, accumulating, and reporting costs in connection with the pricing, administration, and settlement of all covered prime contracts and subcontracts. The Committee adopted an amendment in its mark-up proposed by Senator Levin that makes clear existing exemptions continue to apply unless and until modified by the new CAS Board.

The Administrator may exempt categories of contractors and subcontractors or classes of contracts or subcontracts from the requirements of the cost accounting standards. In addition, the Administrator, after consultation with the Board, is to establish the procedures and criteria for the waiver of individual contracts and subcontracts. Consistent with these procedures and criteria and when an agency head finds it would be in the public interest, he or she may waive the standards. This latter provision is intended to facilitate the award of nonconforming contracts in the event of urgent need or national emergency.

The Committee considered whether there was a need for such government-wide criteria for waiving contracts and whether agency heads needed authorization to exempt classes of contracts or subcontracts on their own. The issue raised was whether the establishment of such government-wide criteria and the limitation of agency head discretion to the waiver of individual contracts and subcontracts was unduly restrictive and inflexible.

The Committee concluded there was a need for government-wide direction of what contracts and subcontracts would be covered by the standards. The Committee does expect the Board and the Ad-

ministrator to be mindful of any individual agency head's assertion that there is a need for an exemption. The Committee also expects it will be informed by the Administrator of OFPP and the respective agency head of disagreements over whether a class of contracts or subcontracts should be exempted.

In considering the functions and responsibilities of the Board, the Committee concluded that the agencies, rather than the Board, should be responsible for determining the allowability of specific costs. In his testimony on S. 2215, the Comptroller General stated, "We believe it is important to separate the cost allocability standards and the cost allowability principles. Allocability is an accounting issue and allowability is a procurement policy issue."

The Committee agrees with this distinction. Accordingly, Section 4 assigns only allocability functions to the Board. Allowability and other similar policy issues will be addressed by the Administrator and the agencies outside the purview of the CAS Board.

An issue brought to the Committee's attention by industry is that the application of a CAS Board interpretation regarding the effect of contractor initiated changes in accounting systems may result in an inequity to the government or the contractor, when such accounting changes have the effect of reducing costs allocated to firm fixed-price contracts. While the Committee does not express any view on the merits of this issue, it fully anticipates the new CAS Board will analyze the circumstances under which such reduced cost allocations may or may not give rise to possible fiscal damage to the government and make any changes in existing rules or interpretations deemed appropriate as a result of the analysis.

The Committee wants to emphasize again the importance of public participation and comments in developing and changing cost accounting standards. Prior to issuing any changes in the standards the Administrator and the Board are to consider the costs of implementation compared to the benefits, and alternatives ways to achieve a proposed action. The Administrator is to publish a report on the findings along with an advanced notice of proposed rulemaking in the Federal Register. There is to be a 60 day comment period after which the Administrator is to publish a proposed rulemaking and provide all parties affected a 60 day period to submit views.

MANDATED PROFIT METHODOLOGY STUDY

Section 5 requires the Administrator to conduct a study to develop a consistent methodology for measuring the profits earned by Government contractors on contracts where price is not based on adequate price competition or on established market prices.

In recent years there have been a number of conflicting studies and conclusions on the issue of contractor profitability of the defense industry. The conflicting conclusions in these studies can be caused by different methodologies. Given the Congressional and public interest on this issue, the Committee decided to mandate an effort by the OFPP to develop a consensus between the executive branch agencies, the General Accounting Office, and industry on what the methodology for profitability studies should be. The pur-

pose of Section 5 is to put the OFPP in a position to produce a methodology which would reflect such a consensus.

The language of Section 5 as amended by the Committee makes clear that the agencies "may" use the methodology developed but are not required to use it. The language of Section 5 makes use of the methodology optional. The Committee believes the determination of whether use of the methodology should be mandatory should wait until after its development.

The Committee realizes the importance of reasonable profits to survival of American industry. For government contractors, numerous elements of Federal procurement policy can have a direct and substantial impact on profit levels. These procurement policies include progress payment rates, profit negotiation guidelines, and cost principles on the allowability of contractor costs.

For this reason, the National Defense Authorization Act for fiscal year 1989, as passed by the Senate, included a requirement for integrated planning of the Department of Defense policies on progress payments, profits and contract risk, with the goal of ensuring these policies do not conflict with each other or undermine the country's innovation and technology base. However, it is difficult to adequately analyze the impact of these policies, or to plan and coordinate changes in these policies, without some basic data on their effects. Consequently, there is a need for a fair method of assessing levels of profits so that the adequacy of government procurement policies can be evaluated.

When a procuring agency or Congress decides that a profit study is needed, it makes great sense for the agencies to follow an already developed and agreed upon methodology. Studies conducted at different times and covering different periods will be comparable. The data will be more meaningful.

IMPROVEMENT OF THE FEDERAL PROCUREMENT DATA SYSTEM

Section 6 requires that the Administrator of OFPP, in consultation with the Comptroller General, conduct a study and submit a report to the Committee on needed improvements to the Federal Procurement Data System.

Pursuant to the provisions of the OFPP Act, the Federal Procurement Data System was established in 1978. Over the past 10 years, several improvements have been made to the system. Nevertheless, the types of data captured by the system need to be reexamined to determine whether they comply with legislative intent, whether the data base provides accurate and complete information, and whether modifications, deletions, or additions are appropriate.

The Committee believes the feasibility of several adjustments in the system should be considered. They include: (1) a two tier reporting system in which more detailed information would be collected on larger contracts without burdening small contract actions with excessive data requirements; (2) collecting additional information on multi-year contracting; (3) using secondary and tertiary product and services codes and standard industrial classification codes; (4) collecting information on the actual number of offers received to provide an indicator of the quality of competition in federal procurement; (5) adding data requirements to the agencies that would

provide information on whether the award was made to an offeror on initial bidders lists or from a source through the Commerce Business Daily synopsis process; and (6) making additional improvements in data reporting for summary contract actions of $25,000 or less.

The OFPP is to report the Committee and Congress by July 1, 1989 on these issues and the overall adequacy and practical utility of the FPDS data for management and oversight purposes.

VIII. Section by Section Analysis

SECTION 1. SHORT TITLE

Section 1 titles the Act the "Reauthorization of the Office of Federal Procurement Policy Act of 1988".

SECTION 2. REAUTHORIZATION OF THE OFFICE OF FEDERAL PROCUREMENT POLICY ACT

Section 2 amends Section 11 of the Office of Federal Procurement Policy Act (41 U.S.C. 401 et seq.) by providing for authorization of appropriations "for each fiscal year". The periodic authorization for appropriations is replaced with a permanent one.

SECTION 3. GOVERNMENT-WIDE PROCUREMENT REGULATIONS

Section 3 amends subsection 6(b) of the Office of Federal Procurement Policy Act by inserting after the phrase, "timely manner," the phrase, "including any such regulations, procedures, and forms as are necessary to implement prescribed policy initiated by the Administrator under subsection (a),". The amended part of subsection 6(b) now reads: "(b) In any instance in which the Administrator determines that the Department of Defense, the National Aeronautics and Space Administration, and the General Services Administration are unable to agree on or fail to issue Government-wide regulations, procedures and forms in a timely manner, including any such regulations, procedures, and forms as are necessary to implement prescribed policy initiated by the Administrator under subsection (a), . . .".

The purpose of this amendment is to clarify the Administrator of OFPP's regulatory authority. The Administrator may "initiate" procurement policy on his own as well as respond to initiatives directed to him from the President, Congress, and the agencies. Policy prescribed by the Administrator is to be implemented in the single system of Government-wide procurement regulations and followed by executive agencies. If the Department of Defense, the National Aeronautics and Space Administration, and the General Services Administration are unable to agree on or fail to issue regulations, procedures, and forms in a timely manner the Administrator may prescribe the needed regulations, procedures, and forms. The Administrator is to determine what constitutes a "timely manner."

The language of subsection 6(b) of the Office of Federal Procurement Policy Act is also intended to ensure that the Administrator not assert the authority to prescribe regulations, procedures, and forms without first providing the Department of Defense, the Na-

tional Aeronautics and Space Administration, and the General Services Administration an opportunity to act. The intent is to enable the Administrator to compel agency implementation of procurement policy if necessary, but not without appropriate consultation.

SECTION 4. FEDERAL ACQUISITION REGULATORY COUNCIL AND COST ACCOUNTING STANDARDS BOARD

Section 4 establishes a Federal Acquisition Regulatory Council and re-establishes a Cost Accounting Standards Board by adding at the end of the Office of Federal Procurement Policy Act (41 U.S.C. 401 et seq.) two new sections, Sections 25 and 26.

FEDERAL ACQUISITION REGULATION COUNCIL

The new subsection 25(a) of the Office of Federal Procurement Policy Act establishes a Federal Acquisition Regulatory Council. The Council is to assist in the direction and coordination of procurement regulatory activities in the Federal Government. The intent of subsection 25(a) is to enable the members of the Council to assist overall management of procurement regulations by establishing a structural mechanism wherein they will be encouraged to work together. The intent is not to increase the authority of the Administrator of OFPP beyond that granted to the Administrator in other sections OFPP Act. Neither is it the intent to relieve the agencies of their primary responsibility for development and implementation of procurement regulations.

Subsection 25(b) declares the members of the Council to be the Administrator of OFPP, and the official assigned by statute with the responsibility for acquisition policy in each of the General Services Administration, the Department of Defense, and the National Aeronautics and Space Administration. If no official in any of the above agencies is assigned by statute with the responsibility for acquisition policy, the head of the respective agency, or any official designated by the the head of such agency shall represent the agency on the Council.

The intent of subsection 25(b) is to focus responsibility for procurement regulatory policy at the highest practicable level of DOD, NASA, and GSA. Maintenance and management of the federal regulatory system merits such high level attention. Subsection 25(b) is not intended to preclude a member of the Council from designating responsibility for attending Council meetings, or other member responsibilities, to another responsible official on their behalf if the member is unable to attend or otherwise perform their responsibility.

Subsection 25(c) declares that DOD, GSA, and NASA shall jointly issue and maintain a single Government-wide procurement regulation, to be know as the "Federal Acquisition Regulation". The agencies shall act pursuant to their respective statutory authorities. The exercise of their authority shall be subject to the authority and functions of the Administrator of OFPP as they are specified by Section 6 of the OFPP Act.

An executive agency may promulgate a procurement regulation only to the extent that such regulation is appropriate to the "single

system of Government-wide procurement regulations" as that term is defined by Section 4(4) of the OFPP Act. Section 4(4) defines the term to mean (A) a single government-wide procurement regulation issued and maintained jointly by the General Service Administration, the Department of Defense, and the National Aeronautics and Space Administration, pursuant to their respective authorities, and (B) agency acquisition regulations implementing and supplementing the Government-wide procurement regulation issued and which shall be limited to regulations essential to implement Government-wide policies and procedures within the agency and additional policies and procedures required to satisfy the specific and unique needs of the agency.

The Administrator in consultation with the other Council members, shall ensure that procurement regulations promulgated by executive agencies are consistent with the Federal Acquisition Regulation.

A purpose behind subsection 25(c) is to enable the Administrator, acting together with the other Council members, to address the problem of proliferating agency supplemental procurement regulations. Proliferating supplemental procurement regulations are a problem in maintaining the FAR that the Council is intended to address and reduce.

Subsection 25(d) states that subject to the authority, direction, and control of the agency head concerned, each member of the Council shall (1) approve or disapprove all proposed and final regulations of their respective department or agency; (2) carry out the responsibilities of the Paperwork Reduction Act assigned to their respective agencies regarding information collection requests contained in or derived from procurement regulations; and (3) eliminate or reduce unnecessary levels of regulatory reviews internal to their respective agencies.

Subsection 25(d) is intended to provide all Council members with the authority and responsibilities needed by each to be effective members of the Council. Sections 3504(h) and 3507 of the Paperwork Reduction Act (44 U.S.C. 35) require agencies to justify their information collection requests in terms of their need and practical utility, standards of review which are not statutorily mandated by the notice and comment requirements of Section 22 of the OFPP Act. The assignment of the Paperwork Reduction Act responsibility to Council members is intended to encourage the opportunity presented to consolidate agency statutory responsibilities under both the Paperwork Reduction Act and the OFPP Act.

Subsection 25(e) states that all actions of the Council and the members shall be in accordance with the policies of sections 2 and 6(a) of the OFPP Act. Section 2 declares Congressional policy regarding federal procurement. Section 6(a) mandates the Administrator of OFPP to provide overall direction and leadership of procurement policy, with due regard for applicable laws and program activities of the executive agencies.

Subsection 25(f) establishes certain management and reporting responsibilities for the Council, all of which are subject to the provisions of subsection 6(b) of the OFPP Act. Subsection 6(b) requires the Administrator of OFPP to determine the DoD, NASA, and GSA are unable to agree, or fail to issue regulations, procedures, or

forms in a timely manner before taking action to prescribe regulations, procedures, and forms. The purpose of subjecting the management and reporting mandates of this section to the requirements of Subsection 6(b) is to reinforce the intent that the Council be used by Council members to operate together in a consultative, cooperative, and collaborative manner. Only if this manner of managing, directing, coordinating and monitoring the Federal Acquisition Regulation fails is the prescriptive authority of the Administrator of OFPP to come into play.

The Council is to manage, direct, coordinate and monitor the maintenance and issuance of modifications of the Federal Acquisition Regulation. It is to issue a report 6 months after date of enactment of this section and every 6 months thereafter. The report shall describe the development of procurement regulations issued jointly and individually by the DoD, GSA, and NASA.

The report shall also include: the status of regulatory changes to the FAR; a description of those regulations which are required by statute; whether public comment in accordance with Section 22 of the OFPP Act and Sections 3504(h) and 3507 of the Paperwork Reduction Act was sought with regard to each proposed regulation; regulatory activities completed and initiated since the last report; regulations, policies, procedures, practices, and forms under consideration or review by OFPP; whether the regulations undr review involve paperwork requirements; the progress made in implementing the FAR; and other matters the Administrator determines useful.

Within 180 days after enactment, the Council is to consult with the Administrator of the Office of Information and Regulatory Affairs and submit a report to Congress regarding the extent of the paperwork burden created by the federal procurement process. The report is to include recommendations and an assessment of the extent to which the Federal procurement system can be streamlined to reduce unnecessary information requests while maintaining the information requests necessary to ensure the integrity of the system. This reporting requirement is intended to encourage a bridge, a working relationship, between the activities of OIRA and OFPP; and between the procurement and information management activities of the agencies represented on the Council.

COST ACCOUNTING STANDARDS BOARD

Subsection 26(a)(1) establishes a Cost Accounting Standards Board within the Office of Federal Procurement Policy. The Administrator of OFPP shall serve as chairman to a five member board. The four other members shall have experience in Government contract cost accounting. One shall be an officer or employee of the Department of Defense and appointed by the Secretary of Defense. One shall be an officer or employee of the General Services Administration and appointed by the Administrator of General Services. The Administrator shall appoint two members; one shall be from private industry, the other from a public accounting firm.

The Administrator is a permanent member of the Board. Other members shall serve four year terms. Individuals appointed from DoD or GSA shall cease to serve if they leave the respective agen-

cy's employment. Vacancies shall be filled in the same manner in which the original appointment was made. Initial Board members are to be appointed no later than 90 days after funds are appropriated for the Board.

Subsection 26(a(3) provides for the organizational considerations of the Board's operation. Compensation for Board members and Administrator's authorities to appoint and arrange for staff resources are described.

Subsection 26(f)(1) vests with the Administrator the exclusive authority to promulgate, amend and rescind cost accounting standards and interpretations designed to achieve uniformity and consistency in how costs are measured, assigned to accounting periods, and allocated to final cost objectives.

Subsection 26(f)(2) defines the types of contracts that will be governed by the cost accounting standards. Unless exempted or waived, negotiated prime and subcontracts which exceed $100,000 will be considered cost accounting covered contracts.

Subsection 26(f)(3) provides the Administrator the authority to exempt classes or categories of contractors and subcontractors from cost accounting satandard coverage. In addition, it requires the Administrator to establish procedures and criteria for heads of executive agencies to use in waiving cost accounting standards for individual contracts and subcontracts.

Subsection 26(f)(4) requires that the standards promulgated by the Board shalll be incorporated in the FAR. The Federal Acquisition Regulation shall require covered contractors and subcontractors as a condition of contracting to disclose in writing their cost accounting practices and agree to a contract price adjustment with interest for any increased costs paid to the contractor by the Government because of a failure of the contractor to comply with duly promulgated cost accounting standards, or to consistently follow the disclosed cost accounting practices of the contractor.

If parties fail to agree as to whether a contractor or subcontractor has complied with the cost accounting standards, the respective regulations, and cost adjustments demanded by the Government, then the disagreement shall constitute a dispute under the Contract Disputes Act.

Prior to the promulgation of cost accounting standards, or modifications of the standards, the Administrator, after consultation with the Board, shall take into account the costs of implementation compared to the benefits; and advantages and disadvantages in the pricing, administration, and settlement of contracts; and the scope of, and alternatives available to, the proposed action. The Administrator shall publish a report on the findings along with an advance notice of proposed rulemaking in the Federal Register in order to solicit comments on the report. All parties affected shall be provided a period not less than 60 days after the report is published to submit views and comments.

During the 60 day comment period on the report, the Administrator is to consult with the Comptroller General and consider any of the Comptroller's recommendations. In addition, the Administrator is to publish a proposed rulemaking in the Federal Register and provide all parties affected a sixty day period to submit views and comment.

All rules, regulations, cost accounting standards, and modifications thereof shall have full force and effect of law and shall become effective no sooner than 120 days after publication in the Federal Register in final form. Implementation dates for contractors and subcontractors shall be determined by agreement with the applicable Federal agency, but in no event later than the beginning of the second fiscal year of the contractor or subcontractor after a standard becomes effective.

Subsection 26(h)(3) describes the conditions under which the Administrator may waive the notification and effective date requirements relating to the cost accounting standards and their incorporation into the FAR.

Subsection 26(j)(1) declares that all cost accounting standards, interpretations, modifications, rules, and regulations—including exemptions—which were promulgated by the Cost Accounting Standards Board established by Section 719 of the Defense Production Act of 1950 shall remain in effect unless action is taken by the Administrator pursuant to the authorities established by this new Section 26 of the OFPP Act.

Subsection 26(j)(3) assigns the Administrator responsibility to ensure that costs which are the subject to cost accounting standards promulgated under the new Section 26 of the OFPP Act are not subjected to regulations established by another executive agency that differ with respect to the measurement, assignment, and allocation of costs.

Subsection 26(k) states that for purposes of determining whether a contractor or subcontractor has complied with cost accounting standards, any authorized representative of the head of the agency concerned, of the offices of inspector general established pursuant to the Inspector General Act of 1978, or of the Comptroller General, may examine and make copies of any documents, papers, or records of such contractor or subcontractor for the purpose of ensuring compliance with cost accounting standards.

Subsection 26(l)(1) authorizes appropriations in such sums as may be necessary to carry out the provisions of Section 26 of the OFPP Act. Section 719 of the Defense Production Act of 1950, which established the Cost Accounting Standards Board which Section 26 of the OFPP Act re-establishes, is repealed.

SECTION 5. PROFIT METHODOLOGY STUDY

Section 5 mandates the Administrator of OFPP to conduct a study to develop a consistent methodology which executive agencies may use for measuring the profits of goverment contractors on noncompetitive contracts. The methodology is not intended for contracts where there is adequate price competition or where based upon established catalog or market prices of commercial items sold in substantial quantities to the general public. The methodology developed is not mandated by the provisions of Section 5 for use by the agencies. The methodology developed shall include adequate procedures for verifying and maintaining the confidentiality of financial data of contractors.

SECTION 6. STUDY AND REPORT BY THE ADMINISTRATOR FOR FEDERAL PROCUREMENT POLICY

Section 6 mandates the Administrator of OFPP to consult with the Comptroller General and conduct a study on the extent to which the data collected by the Federal Procurement Data System is adequate for the management, oversight and evaluation of Federal procurement. The study shall include any appropriate recommendations for improvements of the system. The study shall be submitted to the Committee on Governmental Affairs of the Seante and the Committee on Government Operations of the house of Representatives no later than July 1, 1989.

IX. Cost Estimate of Legislation

Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office (CBO) has reviewed the cost implications of S. 2215. The following is CBO's estimate of the potential costs of this legislation:

U.S. Congress,
Congressional Budget Office,
Washington, DC, April 19, 1988.

Hon. John Glenn,
Chairman, Committee on Governmental Affairs,
U.S. Senate, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has prepared the attached cost estimate for S. 2215, the Reauthorization of the Office of Federal Procurement Policy Act of 1988.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

James L. Blum,
Acting Director.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: S. 2215.

2. Bill title: Reauthorization of the Office of Federal Procurement Policy Act of 1988.

3. Bill status: As ordered reported by the Senate Committee on Governmental Affairs, April 14, 1988.

4. Bill purpose: The bill authorizes the appropriation of $4.5 million for the Office of Federal Procurement Policy for fiscal year 1989. The 1988 budget authority is currently $2.3 million, and the President has requested $2.4 million in 1989 for the agency.

The bill also would establish the Federal Acquisition Regulatory Council and the Cost Accounting Standards Board (CASB) to assist in the direction of procurement regulations and cost accounting standards, respectively.

5. Estimated cost to the Federal Government:

[By fiscal year, in millions of dollars]

	1989	1990	1991	1992	1993
Offie of Federal Procurement Policy:					
Authorization level	4.5				
Estimated outlays	4.1	0.4			
Cost Accounting Standards Board:					
Estimated authorization level	1.8	1.8	1.9	1.9	2.0
Estimated outlays	1.7	1.8	1.9	1.9	2.0
Bill total:					
Estimated authorization level	6.3	1.8	1.9	1.9	2.0
Estimated outlays	5.8	2.2	1.9	1.9	2.0

The costs of this bill fall within budget function 800.

Basis of estimate: this estimate assumes the amounts authorized will be appropriated. The estimates of outlays are based on historical spending patterns or the spending patterns for similar activities.

The estimated authorization level for the CASB is based on a staff size of 25 to 30 employees, similar to the size of the CASB when it existed seven years ago and the size of existing agencies with similar responsibilities. Because fiscal year 1988 is likely to be almost over when the bill is enacted, this estimate assumes funding for the CASB beginning with 1989.

We expect that the creation of the Federal Acquisition Regulatory Council would not result in additional costs to the federal government because it would reorganize existing councils with the same functions.

6. Estimated cost to State and local governments: None.

7. Estimate comparison: None.

8. Previous CBO estimate: None.

9. Estimate prepared by: James Hearn.

10. Estimate approved by: C. G. Nuckols, for James L. Blum, Assistant Director for Budget Analysis.

X. Evaluation of Regulatory Impact

Pursuant to the requirements of paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee has considered the regulatory and paperwork impact of S. 1001, as well as the impact of the bill on personal privacy.

The bill amends the Office of Federal Procurement Policy Act. None of the amendments will impact the personal privacy of individuals. Neither will any of the amendments significantly change the number of individuals or businesses who supply the government and are subject to procurement regulations.

The Committee does intend and expect that several of the amendments will lead to a reduction of regulatory complexity in procurement regulations and to a reduction in the paperwork burdens attendant to participating in federal procurement processes. The essential purpose of establishing the Federal Acquisition Regulatory Council is to provide better overall coordination and management of the Federal Acquisition Regulation (FAR). A key objec-

tive of the Council is to streamline and reduce unnecessary regulatory complexity.

The Council members are assigned responsibility to ensure that their respective agencies meet the public comment responsibilities under both the OFPP Act and the Paperwork Reduction Act. The Committee believes that public comments can serve to highlight opportunities to minimize and reduce the costs of compliance associated with procurement regulations and expects the focus on consolidating these responsibilities by the Council will work to reduce regulations and paperwork requirements. For example, under the Paperwork Reduction Act, agencies are required to examine alternative information technologies and publicly state their estimate of the burdens resulting from proposed information requests so as to assist and improve public comments on them. This improvement in public comments should impact the comments on changes in the FAR which involve information requests.

The Council is also required to report every six months on changes in the FAR. The reporting requirements highlight the importance of minimizing paperwork and regulatory burdens.

Within 180 days after enactment, the Council is to consult with the Administrator of the Office of Information and Regulatory Affairs and submit a report to Congress regarding the extent of the paperwork burden created by the federal procurement process. The report is to include recommendations and an assessment of the extent to which the Federal procurement system can be streamlined to reduce unnecessary information requests while maintaining the information requests necessary to ensure the integrity of the system. This reporting requirement is intended to encourage a bridge, a working relationship, betwen the activities of the Office of Information and Regulatory Affairs and the OFPP; between the procurement and information management activities of the agencies. The Committee expects the long term effect of this initiative will be to reduce the unnecessary regulatory and paperwork burdens of procurement regulations.

XI. Changes in Existing Law

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no changes are proposed is shown in roman):

The Office of Federal Procurement Policy Act, as Amended

(Public Law 93-400, as amended by Public Law 96-83, Public Law 98-191, Public Law 98-369, Public Law 98-577, Public Law 99-145 and Public Law 99-591; 41 U.S.C. et seq.)

To revise the authority and responsibility of the Office of Federal Procurement Policy, to authorize appropriations for the Office of Federal Procurement Policy for an additional four fiscal years, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may

be cited as the "Reauthorization of the Office of Federal Procurement Policy Act of 1988."

REFERENCE

Except as otherwise specifically provided, whenever in this Act a reference is expressed in terms of a section or other provision, the reference shall be considered to be made to a section or other provision, respectively, of the Office of Federal Procurement Policy Act (41 U.S.C. 401 et seq.).

DECLARATION OF POLICY (41 U.S.C. 401)

SEC. 2. It is the policy of the Congress to promote economy, efficiency and effectiveness in the procurement of property and services by the executive branch of the Federal Government by—

(1) promoting full and open competition;

(2) establishing policies, procedures, and practices which will provide the Government with property and services of the requisition quality, within the time needed, at the lowest reasonable cost;

(3) promoting the development of simplified uniform procurement processes;

(4) promoting the participation of small business concerns;

(5) supporting the continuing development of a competent, professional work force;

(6) eliminating fraud and waste in the procurement process;

(7) eliminating redundant administrative requirements placed on contractor and Federal procurement officials;

(8) promoting fair dealings and equitable relationships with the private sector;

(9) ensuring that payment is made in a timely manner and only for value received;

(10) requiring to the extent practicable, the use of commercial products to meet the Government's needs;

(11) requiring that personal services are obtained in accordance with applicable personnel procedrues and not by contract;

(12) ensuring the development of procurement policies that will accommodate emergencies and wartime as well as peacetime requirements; and

(13) promoting, whenever feasible, the use of specifications which describe needs in terms of function to be performed or the performance required.

FINDINGS AND PURPOSES (41 U.S.C. 402)

SEC. 3. (a) The Congress finds that economy, efficiency, and effectiveness in the procurement of property and services by the executive agencies will be improved by establishing an office to exercise responsibility for procurement policies, regulations, procedures, and forms.

(b) The purpose of this Act to establish an Office of Federal Procurement Policy in the Office of Management and Budget to provide overall direction of procurement policies, regulations, procedures, and forms for executive agencies in accordance with applicable laws.

DEFINITIONS (41 U.S.C. 403)

SEC. 4. As used in the Act—

(1) the term "executive agency" means—

(A) an executive department specified in section 101 of title 5, United States Code;

(B) a military department specified in section 102 of such title;

(C) an independent establishment as defined in section 104(1) of such title; and

(D) a wholly owned Government corporation fully subject to the provisions of chapter 91 of title 31, United States Code;

(2) the term "procurement" includes all stages of the process of acquiring property or services, beginning with the process for determining a need for property or services and ending with contract completion and closeout;

(3) the term "procurement system" means the integration of the procurement process, the professional development of procurement personnel, and the management structure for carrying out the procurement function;

(4) the term "single system of Government-wide procurement regulations" means (A) a single Government-wide procurement regulation issued and maintained jointly by the General Services Administration, the Department of Defense, and the National Aeronautics and Space Administration, pursuant to their respective authorities, title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.), chapter 137 of title 10, United States Code, and the National Aeronautics and Space Act of 1958 (42 U.S.C. 2451 et seq.), and (B) agency acquisition regulations implementing and supplementing the Government-wide procurement regulation issued as provided in Clause (A), which shall be limited to (i) regulations essential to implement Government-wide policies and procedures within the agency and (ii) additional policies and procedures required to satisfy the specific and unique needs of the agency;

(5) the term "standards" means the criteria for determining the effectiveness of the procurement system by measuring the performance of the various elements of such system; and

(6) the term "competitive procedures" means procedures under which an agency enters into a contract pursuant to full and open competition;

(7) the term "full and open competition", when used with respect to a pocurement, means that all responsible sources are permitted to submit sealed bids or competitive proposals on the procurement;

(8) the term "responsible source" means a prospective contractor who—

(A) has adequate financial resources to perform the contract or the ability to obtain such resources;

(B) is able to comply with the required or proposed delivery or performance schedule, taking into consideration all

existing commercial and Government business commitments;

(C) has a satisfactory performance record;

(D) has a satisfactory record of integrity and business ethics;

(E) has the necessary organization, experience, accounting and operational controls, and technical skills, or the ability to obtain such organization, experience, controls, and skills;

(F) has the necessary production, construction, and technical equipment and facilities, or the ability to obtain such equipment and facilities; and

(G) is otherwise qualified and eligible to receive an award under applicable laws and regulations;

(9) the term "technical data" means recorded information (regardless of the form or method of the recording) of a scientific or technical nature (including computer software documentation) relating to supplies procured by an agency. Such term does not include computer software or financial, administrative, cost or pricing, or management data or other information incidental to contract administration;

(10)(A) The term "major system" means a combination of elements that will function together to produce the capabilities required to fulfill a mission need, which elements may include hardware, equipment, software or any combination thereof, but excludes construction or other improvements to real property; and

(B) A system shall be considered a major system if (i) the Department of Defense is responsible for the system and the total expenditures for research, development, test and evaluation for the system are estimated to be more than $75,000,000 (based on fiscal year 1980 constant dollars); or the eventual total expenditure for procurement of more than $300,000,000 (based on fiscal year 1980 constant dolalrs); (ii) a civilian agency is responsible for the system and total expenditures for the system are estimated to exceed $750,000 (based on fiscal year 1980 constant dollars) or the dollar threshold for a "major system" established by the agency pursuant to Office of Management and Budget (OMB) Circular A-109, entitled "Major Systems Acquisitions", whichever is greater; or (iii) the system is designated a "major system" by the head of the agency responsible for the system; and

(11) The term "item", "item of supply", or "supplies" means any individual part, component, subassembly, assembly, or subsystem integral to a major system, and other property which may be replaced during the service life of the system, and includes spare parts and replenishment spare parts, but does not include packaging or labeling associated with shipment or identification of an "item".

OFFICE OF FEDERAL PROCUREMENT POLICY (41 U.S.C. 404)

SEC. 5. (a) There is established in the Office of Management and Budget an office to be known as the Office of Federal Procurement Policy (hereinafter referred to as the "Office").

(b) There shall be at the Head of the Office an Administrator for Federal Procurement Policy (hereinafter referred to as the "Administrator), who shall be appointed by the President, by and with the advice and consent of the Senate.

AUTHORITY AND FUNCTIONS OF THE ADMINISTRATOR (41 U.S.C. 405)

SEC. 6. (a) The Administrator shall provide overall direction of procurement policy and leadership in the development of procurement systems of the executive agencies. To the extent that the Administrator considers appropriate, in carrying out the policies and functions set forth in this Act, and with due regard for applicable laws and the program activities of the executive agencies, the Administrator may prescribe Government-wide procurement policies which shall be implemented in the single system of Government-wide procurement regulations and shall be followed by executive agencies in the procurement of—

(1) property other than real property in being;

(2) services, including research and development; and

(3) construction, alteration, repair, or maintenance of real property.

(b) In any instance in which the Administrator determines that the Department of Defense, the National Aeronautics and Space Administration, and the General Services Administration are unable to agree on or fail to issue Government-wide regulations, procedures and forms in a timely manner, *including any such regulations, procedures, and forms as are necessary to implement prescribed policy initiated by the Administrator under subsection (a),* the Administrator may, with due regard for applicable laws and the program activities of the executive agencies and consistent with the policies and functions set forth in this Act, prescribe Government-wide regulations, procedures and forms which shall be followed by executive agencies in the procurement of—

(1) property other than real property in being;

(2) services, including research and development; and

(3) construction, alteration, repair, or maintenance of real property.

(c) The authority of the Administrator under this Act shall not be construed to—

(1) impair or interfere with the determination by executive agencies of their need for, or their use of, specific property, services, or construction, including particular specifications therefor; or

(2) interfere with the determination by executive agencies of specific actions in the award or administration or procurement contracts.

(d) The functions of the Administrator shall include—

(1) providing leadership and ensuring action by executive agencies in the establishment, development and maintenance of the single system of simplified Government-wide procure-

ment regulations and resolving differences among the executive agencies in the development of simplified Government-wide procurement regulations, procedures and forms;

(2) coordinating the development of Goverment-wide procurement system standards that shall be implemented by the executive agencies in their procurement systems;

(3) providing leadership and coordination in the formulation of the executive branch position on legislation relating to procurement;

(4) providing for a computer-based Federal Procurement Data System which shall be located in the General Services Administration (acting as executive agent for the Administrator) and shall collect, develop, and disseminate procurement data;

(5) providing for a Federal Acquisition Institute which shall be located in the General Services Administration (acting as executive agent for the Administrator and shall—

(A) foster and promote Government-wide career management programs for a professional procurement work force; and

(B) promote and coordinate Government-wide research and studies to improve the procurement process and the laws, policies, methods, regulations, procedures, and forms relating to procurement by the executive agencies;

(6) establishing criteria and procedures to ensure the effective and timely solicitation of the viewpoints of interested parties in the development of procurement policies, regulations, procedures, and forms;

(7) developing standard contract forms and contract language in order to reduce the Government's cost of procuring property and services and the private sector's cost of doing business with the Government; and

(8) completing action, as appropriate, on the recommendations of the Commission on Government Procurement.

(e) In carrying out the functions set forth in subsection (d), the Administrator—

(1) shall consult with the affected executive agencies, including the Small Business Administration;

(2) may, with the concurrence of the heads of affected executive agencies, designate an executive agency or executive agencies to assist in the performance of such functions; and

(3) may establish advisory committees or other interagency groups to assist in providing for the establishment, development, and maintenance of a single system of simplified Government-wide procurement regulations and to assist in the performance of any of the other functions which the Administrator considers appropriate.

(f) The Director of the Office of Management and Budget may deny the promulgation of or rescind any Government-wide regulation or final rule or regulation of any executive agency relating to procurement if the Administrator determines that such rule or regulation is inconsistent with the policies set forth in section 2 or any policies, regulations, or procedures issued pursuant to subsection (a).

(g) Except as otherwise provided by law, no duties, functions, or responsibilities, other than those expressly assigned by this Act, shall be assigned, delegated, or transferred to the Administrator.

(h) Nothing in this Act shall be construed to—

(1) Impair or affect the authorities or responsibilities conferred by the Federal Property and Administrative Services Act of 1949 with respect to the procurement of automatic data processing and telecommunications equipment and services or of real property; or

(2) limit the current authorities and responsibilities of the Director of the Office of Management and Budget.

(i)(1) With due regard to applicable laws and the program activities of the executive agencies administering Federal programs of grants or assistance, the Administrator may prescribe Government-wide policies, regulations, procedures, and forms which the Administrator considers appropriate and which shall be followed by such executive agencies in providing for the procurement, to the extent required under such programs, of property or services referred to in clauses (1), (2), and (3) of subsection (a) by recipients of Federal grants or assistance under such program.

(2) Nothing in paragraph (1) shall be construed to—

(A) permit the Administrator to authorize procurement or supply support, either directly or indirectly, to recipients of Federal grants or assistance; or

(B) authorize any action by such recipients contrary to State and local laws, in the case of programs to provide Federal grants or assistance to States and political subdivisions.

ADMINISTRATIVE POWERS (41 U.S.C. 406)

SEC. 7. Upon the request of the Administrator, each executive agency is directed to—

(a) make its services, personnel, and facilities available to the Office to the greatest practicable extent for the performance of functions under this Act; and

(b) except when prohibited by law, furnish to the Administrator and give him access to all information and records in its possession which the Administrator may determine to be necessary for the performance of the functions of the Office.

RESPONSIVENESS TO CONGRESS (41 U.S.C. 407)

SEC. 8. (a) The Administrator shall keep the Congress and its duly authorized committees fully and currently informed of the major activities of the Office of Federal Procurement Policy, and shall submit a report thereon to the House of Representatives and the Senate annually and at such other times as may be necessary for this purpose.

(b) at least 30 days prior to the effective date of any policy or regulation prescribed under section 6(a), the Administrator shall transmit to the Congress a report on the proposed policy or regulation. Such report shall include—

(1) a full description of the policy or regulation;

(2) a summary of the reasons for the issuance of such policy or regulation; and

(3) the names and positions of employees of the Office who will be made available, prior to such effective date, for full consultation with such Committees regarding such policy or regulation.

(c) In the case of an emergency, the President may waive the notice requirement of subsection (b) by submitting in writing to the Congress his reasons therefor at the earliest practicable date on or before the effective date of any policy or regulation.

EFFECT ON EXISTING LAWS (41 U.S.C. 408)

SEC. 9. The Authority of an executive agency under any other law to prescribe policies, regulations, procedures, and forms for procurement is subject to the authority conferred in section 6 of this Act.

EFFECT ON EXISTING REGULATIONS (41 U.S.C. 409)

SEC. 10. Procurement policies, regulations, procedures, or forms in effect on the date of enactment of the Office of Federal Procurement Policy Act Amendments of 1983 shall continue in effect, as modified from time to time, until repealed, amended, or superseded by policies regulations, procedures, or forms promolgated by the Administrator.

AUTHORIZATION OR APPROPRIATIONS (41 U.S.C. 410)

SEC. 11. There are authorized to be appropriated to carry out the provisions of this Act, and for no other purpose, $4,500,000 [for the fiscal year ending September 30, 1984, and for each of the three succeeding fiscal years] *for each fiscal year.*

DELEGATION (41 U.S.C. 411)

SEC. 12. (a) The Administrator may delegate, and authorize successive redelegations of, any authority, function, or power of the Administrator under this Act (other than the authority to provide overall direction of Federal procurement policy and to prescribe policies and regulations to carry out such policy), to any other executive agency with the consent of the the head of such executive agency or at the direction of the President.

(b) The Administrator may make and authorize such delegations within the Office as he determines to be necessary to carry out the provisions of this Act.

ANNUAL PAY (5 U.S.C. 5315)

SEC. 13. Section 5315 of title 5, United States Code, is amended by adding at the end thereof the following: "(100) Adminstrator for Federal Procurement Policy."

ACCESS TO INFORMATION (41 U.S.C. 412)

SEC. 14. (a) The Administrator and personnel in his Office shall furnish such information as the Comptroller General may require

for the discharge of his responsibilities. For this purpose, the Comptroller General or his representatives shall have access to all books, documents, papers, and records of the Office.

(b) The Administrator shall, by regulation, require that formal meetings of the Office, as designated by him, for the purpose of developing procurement policies and regulations shall be open to the public, and that public notice of each such meeting shall be given not less than ten days prior thereto.

TESTS OF INNOVATIVE PROCUREMENT METHODS AND PROCEDURES (41 U.S.C. 413)

SEC. 15. (a) The Administrator may develop innovative porcurement methods and procedures to be tested by selected executive agencies. The innovative procurement methods and procedures tested under this subsection shall be consistent with the policies set forth in section 2. In developing any program to test innovative procurement methods and procedures under this subsection, the Administrator shall consult with the heads of executive agencies to—

(1) ascertain the need for and specify the objectives and such program;

(2) develop the guidelines and procedures for carrying out such program and the criteria to be used in measuring the success of such program;

(3) evalute the potential costs and benefits which may be derived from the innocative procurement methods and procedures tested under such program;

(4) select the appropriate executive agencies or components or executive agencies to carry out such program;

(5) specify the categories and types of products or services to be procured under such program; and

(6) develop the methods to be used to analyse the results of such program.

A program to test innovative procurement methods and procedures may not be carried out unless approved by the heads of the executive agencies selected to carry out such program.

(b) If the Administrator determines that it is necessary to waive the application of any provision of law in order to carry out a proposed program to test innovative procurement methods and procedures under subection (a), the Administrator shall transmit notice of the proposed program to the Committee on Government Operations of the House of Representatives and the Committee on Governmental Affairs of the Senate and request that such committees take such action as may be necessary to provide that such provision of law does not apply with respect to the proposed program. The notification to Congress shall include a description of the proposed program (including the scope and purpose of the proposed program), the procedures to be followed in carrying out the proposed program, the provisions of law affected and any provision of law the application of which must be waived in order to carry out the proposed program, and the executive agencies involved in carrying out the proposed program.

EXECUTIVE AGENCY RESPONSIBILITIES (41 U.S.C. 414)

SEC. 16. To further achieve effective, efficient, and economic administration of the Federal procurement system, the head of each executive agency shall, in accordance with applicable laws, Government-wide policies and regulations, and good business practices—

(1) Increase the use of full and open competition in the procurement of property or services by the executive agency by establishing policies, procedures, and practices that assure that the executive agency receives a sufficient number of sealed bids or competitive proposals from responsible sources to fulfill the Government's requirements (including performance and delivery schedules) at the lowest reasonable cost considering the nature of the property or service procured;

(2) Establish clear lines of authority, accountability, and responsibility for procurement decisionmaking within the executive agency, including placing the procurement function at a sufficiently high level in the executive agency to provide—

(A) direct access to the head of the major organizational element of the executive agency served; and

(B) comparative equality with organizational counterparts;

(3) Designate a senior procurement executive who shall be responsible for management direction of the procurement system of the executive agency, including implementation of the unique procurement policies, regulations, and standards of the executive agency; and

(4) Develop and maintain a procurement career management program in executive agency to assure an adequate professional work force.

STUDIES AND REPORT (41 U.S.C. 415)

SEC. 17. (a) The Administrator shall conduct studies and issue a report on the extent or competition in the award of subcontracts by Federal prime contractors including an evaluation of the date available on subcontracts awarded in fiscal year 1982 with respect to (1) the source selection method used in awarding such subcontracts, (2) the type of subcontracts awarded, (3) the dollar value of such subcontract, (4) the size of the subcontracts which were awarded the subcontract (by number of employee), and (5) the geographical location of such subcontractors. The report shall also include recommendations for improvements, if appropriate in the extent of competition in the awarding of subcontracts and in the collection of data on such subcontract awards.

(b) The report required under subsection (a) of this section shall be completed by April 1, 1984, and shall be submitted to the Committee on the Governmental Affairs of the Senate and the Committee on Government Operations of the House of Representatives not later than April 15, 1984.

PROCUREMENT NOTICE (41 U.S.C. 416)

SEC. 18. (a)(1) Except as provided in subsection (c)—

(A) an executive agency intending to—

(i) solicit bids or proposals for a contract for property or services for a price expected to exceed $25,000;

(ii) place an order, expected to exceed $25,000, under a basic agreement, basic ordering agreement, or similar arrangement; or

(iii) solicit bids or proposals for a contract for property or services for a price expected to exceed $10,000, if there is not a reasonable expectation that at least two offers will be received from responsive and responsible offerors, and shall furnish for publication by the Secretary of Commerce a notice described in subsection (b);

(B) an executive agency intending to solicit bids or proposals or a contract for property or services shall post, for a period of not less than ten days, in a public place at the contracting office issuing the solicitation a notice of solicitation described in subsection (f)—

(i) in the case of an executive agency other than the Department of Defense, if the contract is for a price expected to exceed $10,000, but not to exceed $25,000; and

(ii) in the case of the Department of Defense, if the contract is for a price expected to exceed $5,000, but not to exceed $25,000; and

(C) an executive agency awarding a contract for property or services for a price exceeding $25,000, or placing an order referred to in clause (A)(ii) exceeding $25,000, shall furnish for publication by the Secretary of Commerce a notice announcing the award or order if there is likely to be any subcontract under such contract or order.

(2) The Secretary of Commerce shall publish promptly in the Commerce Business Daily each notice required by paragraph (1).

(3) Whenever an executive agency is required by paragraph (1)(A) to furnish a notice to the Secretary of Commerce, such executive agency may not—

(A) issue the solicitation earlier than 15 days after the date on which the notice is published by the Secretary of Commerce; or

(B) establish a deadline for the submission of all bids or proposals in response to the notice required by paragraph (1)(A) that—

(i) in the case of an order under a basic agreement, basic ordering agreement, or similar arrangement, is earlier than the date 30 days after the date the notice required by paragraph (1)(A)(ii) is published:

(ii) in the case of a solicitation for research and development, is earlier than the date 45 days after the date the notice required by paragraph (1)(A)(i) is published; or

(iii) in any other case, is earlier than the date 30 days after the date the solicitation is issued.

(b) Each notice of solicitation required by subparagraph (A) or (B) of subsection (a)(1) shall include—

(1) an accurate description of the property or services to be contracted for, which description (a) shall not be unnecessarily restrictive of competition, and (b) shall include, as appropriate, the agency nomenclature, National Stock Number of other

part number, and a brief description of the item's form, fit, or function, physical dimensions, predominant material of manufacture, or similar information that will assist a prospective contractor to make an informed business judgment as to whether a copy of the solicitation should be requested;

(2) provisions that—

(A) state whether the technical data required to respond to the solicitation will not be furnished as part of such solicitation, and identify the source in the Government, if any, from which the technical data may be obtained; and

(B) state whether an offeror, its product, or service must meet a qualification requirement in order to be eligible for award, and, if so, identify the office from which the qualification requirement may be obtained;

(3) the name, business address, and telephone number of the contracting officer;

(4) a statement that all responsible sources may submit a bid, proposal, or quotation (as appropriate) which shall be considered by the agency; and

(5) in the case of a procurement using procedures other than competitive procedures, a statement of the reason justifying the use of such procedures and the identify of the intended source.

(c)(1) A notice is not required under subsection (a)(1) if—

(A) the notice would disclose the executive agency's needs and the disclosure of such needs would comprise the national security;

(B) the proposed procurement would result from acceptance of—

(i) any unsolicited proposal that demonstrates a unique and innovative research concept and the publication of any notice of such unsolicited research proposal would disclose originality of thought or innovativeness of the proposal or would disclose proprietary information associated with the proposal; or

(ii) a proposal submitted under section 9 of the Small Business Act;

(C) the procurement is made against an order placed under a requirements contract;

(D) the procurement is made for perishable subsistence supplies; or

(E) the procurement is for utility services, other than telecommunication services, and only one source is available.

(2) The requirements of subsection (a)(1)(A) do not apply to any procurement under conditions described in paragraph (2), (3), (4), (5), or (7) of section 303(c) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(c)) or paragraph (2), (3), (4), (5), or (7) of section 2304(c) of title 10, United States Code.

(3) The requirements of subsection (a)(1)(A) shall not apply in the case of any procurement for which the head of the executive agency makes a determination in writing, after consultation with the Administrator for Federal Procurement Policy and the Administrator of the Small Business Administration, that it is not appro-

priate or reasonable to publish a notice before issuing a solicitation.

(d) An executive agency shall make available to any business concern, or the authorized representative of such concern, the complete solicitation package for any on-going procurement announced pursuant to a notice under subsection (e). An executive agency may require the payment of a fee, not exceeding the actual cost of duplication, for a copy of such package.

RECORD REQUIREMENTS (41 U.S.C. 417)

SEC. 19. (a) Each executive agency shall establish and maintain for a period of five years a computer file, by fiscal year, containing unclassified records of all procurements, other than small purchases, in such fiscal year.

(b) The record established under subsection (a) shall include—

(1) with respect to each procurement carried out using competitive procedures—

(A) the date of contract award;

(B) information identifying the source to whom the contract was awarded;

(C) The property of services obtained by the Government under the procurement; and

(D) the total cost of the procurement;

(2) with respect to each procurement carried out using procedures other than competitive procedures—

(A) the information described in clauses (1)(A), (1)(B), (1)(C), and (1)(D);

(B) the reason under section 303(c) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(c)) or section 2304(c) of title 10, United States Code, as the case may be, for the use of such procedures; and

(C) the identity of the organization or activity which conducted the procurement.

(c) The information that is included in such record pursuant to subsection (b)(1) and relates to procurements resulting in the submission of a bid or proposal by only one responsible source shall be separately categorized from the information relating to other procurements included in such record. The record of such information shall be designated "noncompetitive procurements using competitive procedures".

(d) The information included in the record established and maintained under subsection (a) shall be transmitted to the General Services Administration and shall be entered in the Federal Procurement Data System referred to in section 6(d)(4).

ADVOCATES FOR COMPETITION (41 U.S.C. 418)

SEC. 20. (a)(1) There is established in each executive agency an advocate for competition.

(2) The head of each executive agency shall—

(A) designate for the executive agency and for each procuring activity of the executive agency one officer of employee serving in a position authorized for such executive agency on the date of enactment of the Competition in Contracting Act of

1984 (other than the senior procurement executive designated pursuant to section 16(3)) to serve as the advocate for competition;

(B) not assign such officers or employees any duties or responsibilities that are inconsistent with the duties and responsibilities of the advocates for competition; and

(C) provide such officers or employees with such staff or assistance as may be necessary to carry out the duties and responsibilities of the advocate for competition, such as persons who are specialists in engineering, technical operations, contract administration, financial management, supply management, and utilization of small and disadvantaged business concerns.

(b) The advocate for competition of an executive agency shall—

(1) be responsible for challenging barriers to and promoting full and open competition in the procurement of property and services by the executive agency;

(2) review the procurement activities of the executive agency;

(3) identify and report to the senior procurement executive of the executive agency designated pursuant to section 16(3)—

(A) opportunities and actions taken to achieve full and open competition in the procurement activities of the executive agency; and

(B) any condition or action which has the effect of unnecessarily restricting competition in the procurement actions of the executive agency; and

(4) prepare and transmit to such senior procurement executive an annual report describing—

(A) such advocate's activities under this section;

(B) new initiatives required to increase competition, and

(C) barriers to full and open competition that remain;

(5) recommend to the senior procurement executive of the executive agency goals and the plans for increasing competition on a fiscal year basis;

(6) recommend to the senior procurement executive of the executive agency a system of personal and organizational accountability for competition, which may include the use of recognition and awards to motivate program managers, contracting officers, and others in authority to promote competition in procurement programs; and

(7) describe other ways in which the executive agency has emphasized competition in programs for procurement training and research.

(c) The advocate for competition for each procuring activity shall be responsible for challenging barriers to and promoting full and open competition in the procuring activity, including unnecessarily detailed specifications and unnecessarily restrictive statements of need.

RIGHTS IN TECHNICAL DATA (41 U.S.C. 418a)

SEC. 21. (a) The legitimate proprietary interest of the United States and of a contractor in technical or other data shall be defined in regulations described as part of the single system of Gov-

ernment-wide procurement regulations as defined in section 4(4) of this Act. Such regulations may not impair any right of the United States or of any contractor with respect to patents or copyrights or any other right in technical data otherwise established by law. Such regulations shall provide, with respect to executive agencies that are subject to the provisions of title III of the Federal Property and Administrative Services Act of 1949, that the United States may not require persons who have developed products or processes offered or to be offered for sale to the public as a condition for the procurement of such products or processes by the United States, to provide to the United States technical data relating to the design, development, or manufacture of such products or processes (except for such data as may be necessary for the United States to operate and maintain the product or use the process if obtained by the United States as an element of performance under the contract).

(b)(1) Except as otherwise expressly provided by Federal statute, the regulations prescribed pursuant to subsection (a) shall provide, with respect to executive agencies that are subject to the provisions of title III of the Federal Property and Administrative Services of 1949, that the United States shall have unlimited rights in technical data developed exclusively with Federal funds if delivery of such data—

(A) was required as an element of performance under a contract; and

(B) is needed to ensure the competitive acquisition of supplies or services that will be required in substantial quantities in the future.

(2) Except as otherwise expressly provided by Federal statute, the regulations prescribed pursuant to subsection (a) shall provide, with respect to executive agencies that are subject to the provisions of title III of the Federal Property and Administrative Services Act of 1949, that the United States (and each agency thereof) shall have an unrestricted, royalty-free right to use, or to have its contractors use, for governmental purposes (excluding publication outside the Government) technical data developed exclusively with Federal funds.

(3) The requirements of paragraphs (1) and (2) shall be in addition to and not in lieu of any other rights that the United States may be pursuant to law.

(c) The following factors shall be considered in prescribing regulations pursuant to subsection (a):

(1) Whether the item or process to which the technical data pertains was developed—

(A) exclusively with Federal funds;

(B) exclusively at private expense; or

(C) in part with Federal funds and in part at private expense.

(2) The statement of congressional policy and objectives in section 200 of title 35, the statement of purposes in section 2(b) of the Small Business Innovation Development Act of 1982 (Public Law 97-219; 15 U.S.C. 638 note), and the declaration of policy in section 2 of the Small Business Act (15 U.S.C. 631).

(3) The interest of the United States in increasing competition and lowering costs by developing and locating alternative sources of supply and manufacture.

(d) Regulations prescribed under subsection (a) shall require that a contract for property or services entered into by an executive agency contain appropriate provisions relating to technical data, including provisions—

(1) defining the respective rights of the United States and the contractor or subcontractor (at any tier) regarding any technical data to be delivered under the contract;

(2) specifying the technical data, if any, to be delivered under the contract and delivery schedules for such delivery;

(3) establishing or referencing procedures for determining the acceptability of technical data to be delivered under the contract;

(4) establishing separate contract line items for the technical data, if any, to be delivered under the contract;

(5) to the maximum practicable extent, identifying, in advance of delivery, technical data which is to be delivered with restrictions on the right of the United States to use such data;

(6) requiring the contractor to revise any technical data delivered under the contract to reflect engineering design changes made during the performance of the contract and affecting the form, fit, and function of the items specified in the contract and to deliver such revised technical data to an agency within a time specified in the contract;

(7) requiring the contractor to furnish written assurance at the time the technical data is delivered or is made available that the technical data is complete and accurate and satisfies the requirements of the contract concerning technical data;

(8) establishing remedies to be available to the United States when technical data required to be delivered or made available under the contract is found to be incomplete or inadequate or to not satisfy the requirements of the contract concerning technical data; and

(9) authorizing the head of the agency to withhold payments under the contract (or exercise such other remedies as the head of the agency considers appropriate) during any period of the contractor does not meet the requirements if the contract pertaining to the delivery of technical data.

PUBLICATION OF PROPOSED REGULATIONS (41 U.S.C. 419b)

SEC. 22. (a) Except as provided in subsection (d), no procurement policy, regulation, procedure, or from (including amendments or modifications thereto) relating to the expenditure of appropriated funds that has (1) a significant effect beyond the internal operating procedures of the agency issuing the procurement policy, regulation, procedure or form, or (2) a significant cost or administrative impact on contractors or offerors, may take effect until 30 days after the procurement policy, regulation, procedure, or form is published for public comment in the Federal Register pursuant to subsection (b).

(b) Subject to subsection (c), the head of the agency shall cause to be published in the Federal Register a notice of the proposed procurement policy, regulation, procedure, or form and provide for a public comment period for receiving and considering the views of all interested parties on such proposal. The length of such comment period may not be less than 30 days.

(c) Any notice of a proposed procurement policy, regulation, procedure, or form prepared for publication in the Federal Register shall include—

(1) the text of the proposal or, if it is impracticable to publish the full text of the proposal, a summary of the proposal and a statement specifying the name, address, and telephone number of the officer or employee of the executive agency from whom the full text may be obtained; and

(2) a request for interested parties to submit comments on the proposal and shall include the name and address of the officer or employee of the Government designated to receive such comments.

(d)(1) the requirements of subsections (a) and (b) may be waived by the officer authorized to issue a procurement policy, regulation, procedure, or form if urgent and compelling circumstances make compliance with such requirements impracticable.

(2) A procurement policy, regulation, procedure, or form with respect to which the requirements of subsections (a) and (b) are waived under paragraph (1) shall be effective on a temporary basis if—

(A) a notice of such procurement policy, regulation, procedure, or form is published in the Federal Register and includes a statement that the procurement policy, regulation, procedure, or form is temporary; and

(B) provision is made for a public comment period of 30 days beginning on the date on which the notice is published.

After considering the comments received, the head of the agency waiving the requirements of subsections (a) and (b) under paragraph (1) may issue the final procurement policy, regulation, procedure, or form.

ANNUAL REPORT ON COMPETITION (41 U.S.C. 419)

SEC. 23. (a) Not later than January 31 of each of 1986, 1987, 1988, 1989, and 1990, the head of each executive agency shall transmit to each House of Congress a report including the information specified in subsection (b).

(b) Each report under subsection (a) shall include—

(1) a specific description of all actions that the head of the executive agency intends to take during the current fiscal year to—

(A) increase competition for contracts with the executive agency on the basis of cost and other significant factors; and

(B) reduce the number and dollar value of noncompetitive contracts entered into by the executive agency; and

(2) a summary of the activities and accomplishments of the advocate for competition of the executive agency during the preceding fiscal year.

TRAVEL EXPENSES OF GOVERNMENT CONTRACTORS (41 U.S.C. 420)

SEC. 24. (a) Under any contract with any executive agency, costs incurred by contractor personnel for travel, including costs of lodging, other subsistence, and incidental expenses, shall be considered to be reasonable and allowable only to the extent that they do not exceed the rates and amounts set by subchapter I of chapter 57 of title 5, United States Code, or by the Administrator of General Services or the President (or his designee) pursuant to any provision of such subchapter. This section shall be implemented in regulations prescribed as a part of the single system of Government-wide procurement regulations as defined in section 4 of this Act.

FEDERAL ACQUISITION REGULATORY COUNCIL

SEC. 25. (a) There is established a Federal Acquisition Regulatory Council (hereinafter in this section referred to as the 'Council') to assist in the direction and coordination of procurement regulatory activities in the Federal Government.

(b) The members of the Council shall be the Administrator and the official assigned by statute with the responsibility for acquisition policy in each of the General Services Administration, the Department of Defense, and the National Aeronautics and Space Administration. If no official in any of such agencies is assigned by statute with the responsibility for acquisition policy for such agency, the head of such agency or any official designated by the head of such agency shall represent the agency on the Council.

(c) Subject to the provisions of section 6 of this Act, the General Services Administration, the Department of Defense, and the National Aeronautics and Space Administration, pursuant to the respective authority of each such agency under title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.), chapters 4 and 137 of title 10, United States Code, and the National Aeronautics and Space Act of 1958 (42 U.S.C. 2451 et seq.), shall jointly issue and maintain a single Government-wide procurement regulation, to be known as the 'Federal Acquisition Regulation'. An executive agency may promulgate a procurement regulation only to the extent that such regulation is appropriate to a 'single system of Government-wide regulations' as such term is defined under section 4(4) of this Act. The Administrator, in consultation with the Council, shall ensure that procurement regulations promulgated by executive agencies are consistent with the Federal Acquisition Regulation.

(d) Subject to the authority, direction, and control of the head of the agency concerned, each official described or appointed under subsection (b) shall—

(1) approve or disapprove all proposed and all final regulations of the department or agency of such official relating to procurement;

(2) carry out the responsibilities of the department or agency set forth in chapter 35 of title 44, United States Code, for each

information collection request (as defined in section 3502(11) of title 44, United States Code) that relates to procurement rules or regulations; and

(3) eliminate or reduce the redundant or unnecessary levels of regulatory review in the procurement system of the department or agency of such official.

(e) All actions of the Council and of members of the Council shall be in accordance with and in furtherance of the policies of sections 2 and 6(a) of this Act.

(f) Subject to the provisions of section 6(b), the Council shall—

(1) manage, direct, coordinate and monitor the maintenance and issuance of modifications of the Federal Acquisition Regulation;

(2) publish a report 6 months after the date of enactment of this section and every 6 months thereafter relating to development of procurement regulations to be issued jointly by members of the Council and to the extent appropriate, by each of the General Services Administration, the Department of Defense, and the National Aeronautics and Space Administration;

(3) include in each report published under paragraph (2)—

(A) the status of each such regulation;

(B) a description of the regulations which are required by statute;

(C) whether public comment in accordance with section 22 of this Act, and to the extent appropriate, sections 3504(h) and 3507 of title 44, United States Code, was sought with regard to each proposed regulation;

(D) regulatory activities completed and initiated since the most recently published report;

(E) regulations, policies, procedures, practices, and forms under consideration or review by the Office of Federal Procurement Policy;

(F) whether the regulations have paperwork requirements;

(G) the progress made in promulgating and implementing the Federal Acquisition Regulation; and

(H) such other matters as the Administrator determines useful; and

(3) within 180 days after the date of the enactment of this section, submit a report to the Congress, after consultation with the Administrator of the Office of Information and Regulatory Affairs, regarding—

(A) the extent of the paperwork burden created by the Federal procurement process; and

(B) the extent to which the Federal procurement system can be streamlined to reduce unnecessary paperwork while maintaining recordkeeping and reporting requirements necessary to ensure the integirty of the system.

COST-ACCOUNTING STANDARDS BOARD

SEC. 26. (a)(1) There is established within the Office of Federal Procurement Policy the 'Cost-Accounting Standards Board' (hereinafter referred to as the 'Board'), which shall consist of 5 members, including the Administrator, who shall serve as Chairman, and 4

other members, all of whom shall have experience in Government contract cost accounting and who shall be appointed as follows:

(A) two shall be appointed who are officers or employees of the Federal Government—

(i) one of whom shall be an officer or employee of the Department of Defense and shall be appointed by the Secretary of Defense; and

(ii) one of whom shall be an officer or an employee of the General Services Administration appointed by the Administrator of General Services.

(B) one shall be appointed by the Administrator from private industry; and

(C) one shall be appointed by the Administrator from the accounting profession.

(2)(A) The term of office of each of the members of the Board, other than the Administrator, shall be 4 years, except that—

(i) any member appointed to fill a vacancy on the Board shall serve for the remainder of the term for which his predecessor was appointed; and

(ii) no individual who is appointed under paragraph (1)(A) of this section shall continue to serve on the Board after ceasing to be an officer or employee of the agency from which appointed.

(B) A vacancy on the Board shall be filled in the same manner in which the original appointment was made.

(C) The initial members of the Board shall be appointed no later than 90 days after funds are appropriated under subsection (1)(1) of this section.

(3) Each member of the Board who is not an officer or employee of the Federal Government shall receive compensation at a rate not to exceed the daily equivalent of the rate prescribed for level V of the Executive Schedule for each day (including traveltime) in which the member is properly engaged in the actual performance of duties vested by law in the Board.

(b) The Administrator, after consultation with the Board, may appoint an executive secretary and two additional staff members without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and may pay such employees without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, except that no individual so appointed may receive pay in excess of the annual rate of basic pay payable for GS–18 of the General Schedule.

(c) The Administrator may appoint, fix the compensation, and remove additional employees of the Board under the applicable provisions of title 5, United States Code.

(d)(1) The Board may use, without reimbursement, any personnel of a Federal agency (with the consent of the head of the agency concerned) to serve on advisory committees and task forces to assist the Board in carrying out the functions and responsibilities of the board under this section.

(2) The Administrator, after consultation with the Board, may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, of personnel for the purpose of serving on advisory committees and task forces to assist the Board in carry-

ing out the functions and responsibilities of the Board under this section. Any individual so hired may be paid at rates for individuals not to exceed the daily equivalent of the rate of pay payable for level V of the Executive Schedule for each day (including travel time) in which such an individual is properly engaged in the actual performance of duties under this section.

(e) Except as otherwise provided in subsection (a), the members of the Board who are officers or employees of the Federal Government, and officers and employees of other agencies of the Federal Government who are utilized under subsection (d) shall receive no additional compensation for services, but shall continue to be compensated by the employing Department or agency of such officer or an employee. Appointees under subsection (d) from private life may receive compensation at rates fixed by the Administrator, but not exceed the daily equivalent of the rate prescribed for level V of the Federal Executive Salary Schedule under section 5316 of title 5, United States Code, for each day (including traveltime) in which such appointees are properly engaged in the actual performance of duties under this section. While serving away from home or the regular place of business, Board members and other appointees serving on an intermittent basis under this section shall be allowed travel expenses in accordance with section 5703 of title 5, United States Code.

(f)(1) The Administrator, after consultation with the Board, shall have the exclusive authority to make, promulgate, amend, and rescind cost-accounting standards and interpretations designed to achieve uniformity and consistency in the measurement, assignment, and allocation of costs to contracts with the United States.

(2) Subject to the provisions of paragraph (3) and subsection (j)(1), the cost-accounting standards, promulgated by the Administrator after consultation with the Board, shall be used by all executive agencies and by contractors and subcontractors in estimating, accumulating, and reporting costs in connection with pricing, administration, and settlement of all negotiated prime contracts with the United States in excess of $100,000 and negotiated subcontracts in excess of $100,000 thereunder.

(3)(A) the Administrator, after consultation with the Board, may exempt classes or categories of contractors and subcontractors from the requirements of this section;

(B) The Administrator, after consultation with the Board, shall establish procedures and criteria for the waiver of the requirements of this section with respect to individual contracts and subcontracts; and

(C) Under the procedures and criteria established under subparagraph (B), the head of any executive agency may waive the requirement of this section with respect to individual contracts and subcontracts if such a waiver is in the public interest.

(g)(1) The single system of Government-wide procurement regulations shall include regulations for the implementation of cost-accounting standards promulgated under subsection (f). Such regulations shall require any contractor or subcontractor as a condition of contracting with the United States to—

(A) disclose in writing the cost-accounting practices of such contractor and subcontractor, including methods of distinguish-

ing direct costs from indirect costs and the basis used for allocating indirect costs; and

(B) agree to a contract price adjustment, with interest, for any increased costs paid to such contractor by the United States because of the failure of the contractor to comply with duly promulgated cost-accounting standards or to consistently follow the disclosed cost-accounting practices of such contractor.

(2) The interest rate applicable to the price adjustment shall be the annual rate of interest established under section 6621 of the Internal Revenue Code of 1986 for such period. Such interest shall accrue from the time payments of the increased costs are made to the contractor or subcontractor to the time the United States receives full compensation for the price adjustment. If the parties fail to agree as to whether the contractor or subcontractor has complied with cost-accounting standards, the rules and regulations relating thereto, and cost adjustments demanded by the United States, such disagreements shall constitute a dispute under the Contract Disptues Act (41 U.S.C. 601 et seq.).

(h)(1) Except as provided in paragraph (3), prior to the promulgation under this section of cost-accounting standards, and modifications thereof, the Administrator, following consultation with the Board, shall—

(A) take into account—

(i) the probable costs of implementation including inflationary effect, if any, compared to the probable benefits;

(ii) the advantages, disadvantages, and improvements anticipated in the pricing, administration, and settlement of contracts; and

(iii) the scope of, and alternatives available to, the action proposed to be taken;

(B) prepare and publish a report in the Federal Register on the issues reviewed under paragraph (1)(A);

(C)(i) publish an advanced notice of proposed rulemaking in the Federal Register in order to solicit comments on the report prepared pursuant to paragraph (1)(B);

(ii) provide all parties affected a period of not less than 60 days after such publication to submit views and comments;

(iii) during such 60-day period, consult with the Comptroller General and consider any recommendation of the Comptroller General; and

(D) publish a notice of proposed rulemaking in the Federal Register and provide all parties affected a period of not less than 60 days after such publication to submit views and comments.

(2) Rules, regulations, cost-accounting standards, and modifications thereof shall have the full force and effect of law, and, except as provided in paragraph (3), shall become effective no sooner than 120 days after publication in the Federal Register in final form. Implementation dates for contractors and subcontractors shall be determined by agreement with the applicable Federal agency, but in no event later than the beginning the second fiscal year of the contractor or subcontractor after a standard becomes effective. Rules, regulations, cost-accounting standards, and modifications promul-

gated by the Administrator shall be accompanied by prefatory comments, and by illustrations if necessary.

(3) The requirements of paragraph (1) and the effective dates in paragraph (2) shall be waived if the Administrator determines that urgent and compelling circumstances make compliance with such requirements impracticable. A cost-accounting standard or modification of a cost-accounting standard for which the requirements of paragraphs (1) and (2) are waived shall be effective on a temporary basis provided that the Administrator—

(A) publishes a notice of such cost-accounting standard or modification of a cost-accounting standard in the Federal Register and includes a statement that the cost-accounting standard or modification of a cost-accounting standard is temporary;

(B) provides for a public comment period of not less than 30 days beginning on the date that the notice is published;

(C) takes into account—

(i) the probable costs of implementation, including inflationary effects, if any, compare to the probable benefits;

(ii) the advantages, disadvantages, and improvements anticipated in the pricing, administration, and settlement of contracts; and

(iii) the scope of, and alternatives available to, the action proposed to be taken; and

(D) prepares and publishes a report in the Federal Register on the issues reviewed under paragraph (C) as part of the notice of final rulemaking.

(4) The functions exercised under this section are excluded from the operation of sections 551, 553 through 559, and 701 through 706 of title 5, United States Code.

(i) The Administrator, after consultation with the Board, shall report to the Congress no later than 1 year after the date of enactment of this section, and annually thereafter, with respect to the activities and operations of the Board under this section, together with any appropriate recommendations.

(j)(1) All cost-accounting standards, interpretations, modifications, rules, and regulations (including exemptions) promulgated by the Cost-Accounting Standards Board under section 719 of the Defense Production Act of 1950 (50 U.S.C. App. 2168) shall remain in effect unless amended, superseded, or rescinded by the Administrator pursuant to this section.

(2) Cost-accounting standards in effect before the date of enactment of this section referred to in paragraph (1) shall be subject to the provisions of this section in the same manner as if promulgated by the Administrator under this section.

(3) The Administrator, under the authority set forth in section 6 of this Act, shall ensure that costs which are the subject to cost-accounting standards promulgated under this section shall not be subject to regulations that are established by another executive agency that differ from such standards with respect to the measurement, assignment, and allocation of such costs.

(k) For purposes of determining whether a contractor or subcontractor has complied with cost-accounting standards and has followed consistently the disclosed cost-accounting practices, any authorized representative of the head of the agency concerned, of the

offices of Inspector General established pursuant to the Inspector General Act of 1978, or of the Comptroller General of the United States may examine and make copies of any documents, papers, or records of such contractor or subcontractor relating to, and solely for the purpose of ensuring compliance with such cost-accounting standards.

(l)(1) There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this section.

(2) Section 719 of the Defense Production Act of 1950 (50 U.S.C. App. 2168) is repealed.

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